A SUMMARY

OF THE

LAW OF COMPANIES

Third Edition

T. EUSTACE SMITH

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[See Catalogue at end of this Volume.]

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BY

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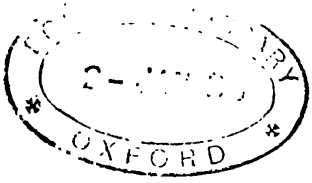

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PREFACE

TO THE THIRD EDITION.

In preparing this Edition I have gone carefully through the whole work and have added many points of practice which I think will be of use to all concerned in the management or winding-up of Companies.

I have also embodied in it the Companies Act of 1883, and the Companies Colonial Registry Act, 1883, and all cases of importance relating to Companies which have been decided since the last Edition appeared.

T. EUSTACE SMITH.

12, Old Square, Lincoln's Inn,
December, 1885.

PREFACE

TO THE SECOND EDITION.

SINCE this small work first appeared the Companies Acts of 1879 and 1880 have been passed, and a large number of important cases on questions relating to companies have been decided by the Courts.

I have carefully revised and altered the work so as to include the statutes of 1879 and 1880 and the more important decisions of the last three years, and have made considerable additions to the parts of the book which treat of matters of practice of ordinary occurrence. In making these additions, however, I have been very anxious not to needlessly add to the size of the book, and to keep it—what it was originally intended to be—a plain guide to the principles and practice of the law affecting Companies.

I have added an Appendix, which sets out the forms and fees which are most likely to be required in practice.

T. EUSTACE SMITH.

10, NEW SQUARE,

July, 1881.

PREFACE

TO THE FIRST EDITION.

As an articled clerk reading for the "Final" examination of the Incorporated Law Society, I felt the need of some small book to give the main principles of the law relating to joint stock companies; more particularly as this important branch of mercantile law lies outside the scope of the text books ordinarily used by students. The text books on Companies are so large, and the Companies Acts themselves so long, that the Student cannot gain even the most general knowledge of company law without devoting to it more time than, as a rule, he can safely spare from other subjects. With a view to meet this want, I have prepared the following pages, and have endeavoured in them, as briefly and concisely as possible, to give a general view both of the principles and practice of the law affecting Companies.

I also hope that this small work may be of use to the general reader, and for this purpose I have carefully given an authority for every statement I have made, in order that it may not only form an epitome of the Companies Acts, but also a ready index, showing where fuller information may be obtained on any point—either from the Acts themselves or the larger text books.

T. EUSTACE SMITH.

May, 1878.

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CHAPTER I.

OF THE DIFFERENT KINDS OF JOINT STOCK COMPANIES.

COMPANIES as they originally existed were of two kinds only; (1) incorporated, or those which had been formed into corporations,[1] and (2) unincorporated.

Advantages of incorporated over unincorporated companies.

Incorporated companies had this great advantage over unincorporated, that while a corporation was considered as a distinct individual, able to sue and liable to be sued by its own members, an unincor-

[1] Corporations are artificial persons created by the law and endowed by it with the capacity of perpetual succession. They consist of collective bodies of men or of single individuals; the first are called corporations aggregate, the second, corporations sole. The existence of corporations is constantly maintained by the succession of new individuals in the place of those who die or are removed. Steph. Com., 7th ed. vol. i., p. 358.

porated company was considered by the law as an ordinary partnership, and its members, however great its size, were governed by the same rules as partners generally. Another great advantage a corporation had over an unincorporated company was that the property of the corporation and not that of its members was liable for its debts.

Corporations can be created either by Royal Charter, conferred by letters patent, or by Act of Parliament, and these were originally the only methods, by which persons desirous of associating together for purposes of profit could escape the ordinary incidents and liabilities of partnership. As the numbers and importance of companies increased, various Acts of Parliament were passed providing other, and less expensive ways for the formation of joint stock companies, but as these, with a few exceptions presently referred to, have been repealed, and new enactments made by the Companies Act, 1862,[1] as amended by the Companies Acts of 1867, 1877, 1879, 1880, and 1883,[2] it is unnecessary to refer to them at length.

A joint stock company has been defined as "an association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares, of which each possesses

[1] 25 & 26 Vict. c. 89.

[2] 30 & 31 Vict. c. 131; 40 & 41 Vict. c. 26; 42 & 43 Vict. c. 76; 43 Vict. c. 19; 46 & 47 Vict. c. 28 & 30.

one or more, and which are transferable by the owner." [1]

Joint stock companies may be divided into two great classes:

1. Those not formed under the Companies Act, 1862.
2. Those formed under that Act.

The former of these classes may be divided as follows:—

1. Cost Book Mining Companies.
2. Companies incorporated or privileged by the Crown.
3. Companies incorporated by some special Act of Parliament.
4. Banking companies formed under 7 Geo. IV. c. 46.

1. *Cost Book Mining Companies.*

Cost book mining companies.

These are companies governed by local custom, and it appears doubtful whether they can be formed for working mines beyond the jurisdiction of the Stannaries. They are mere partnerships, and the members are governed by the general law relating to partners, except so far as that law is expressly excluded by the custom. The company is formed

[1] Shelford's Joint Stock Companies Acts, p. 1.

by the agreement together of a number of adventurers who agree to share the risk and expense of working a lode. The mine is managed by an agent called a "Purser," under the control of the shareholders. The terms of the agreement are entered in a book called the "Cost Book;" in this book are also entered all receipts and payments on behalf of the mine, a list of the members, and all transfers of the shares.[1] The shares are transferable, may be relinquished, and are liable for non-payment of calls.[2] By a recent Act,[3] a past member, who has ceased to be a member for two years or upwards, before the mine ceased to be worked, or before the date of the winding-up order, is not liable to contribute to the assets of the company. Companies within the jurisdiction of the Stannaries are regulated by the Stannaries Act, 1869 (32 & 33 Vict. c. 19).

A Cost Book mining company may now sue and be sued like any other partnership in the partnership name.[4]

2. *Companies incorporated or privileged by the Crown.*

Companies incorporated by the Crown.

Firstly. Companies incorporated by the Crown. The Crown has at common law the power of incorporating, by charter, any persons desiring to be in-

[1] Wharton's Law Lexicon.

[2] Lindley on Partnership, 3rd ed., p. 153.

[3] 32 & 33 Vict. c. 19, s. 25.

[4] *Escott* v. *Grey*, 47 L. J. 607.

corporated, and a chartered company is therefore formed, as soon as a charter of incorporation is granted to, and accepted by, two or more individuals.[1] A company when so formed, is not a partnership, and is governed solely by the terms of its charter. Companies may still be formed in this way, but it seems to have fallen into disuse.

Companies privileged by the Crown.

Secondly. Companies privileged by the Crown. By the 7 Will. IV. & 1 Vict. c. 73, the Crown is empowered to grant by letters patent to any company any privileges which the Crown might at common law grant to any company, by any charter of incorporation. A company does not become incorporated by such letters patent. It is required to be entered into by an agreement under seal containing certain provisions specified by the Act.[2] The privileges of a company formed in this way depend on the letters patent, and the members are liable for all debts and liabilities, except so far as their liability is limited by the letters patent. Companies may still be privileged by letters patent, but this method, like the last, appears to have fallen into disuse.[3]

Writs of summons to be served on companies chartered under the 7 Will. IV. & 1 Vict. c. 73, may be personally served on the clerk of the company or be left at the head office, or if the clerk is

[1] Lindley on Partnership, 3rd ed., p. 155.

[2] 7 Will. IV. & 1 Vict. c. 73, s. 5. See also 47 & 48 Vict. c. 56.

[3] Shelford's Joint Stock Companies Acts, p. 388.

not found or known, on any agent or officer of the company, or be left at the usual place of abode of such agent or officer.[1]

3. *Companies incorporated by special Act of Parliament.*

Companies incorporated by special Act of Parliament.

A company incorporated under any special Act of Parliament exists as an incorporated company, and is regulated by its special Act alone, but companies incorporated since the 8th of May, 1845, are governed by the Companies Clauses Consolidation Act,[2] save so far as its clauses and provisions are expressly varied or exempted by the company's special Act. Companies are frequently at the present day incorporated by special Act of Parliament, and are generally of a public nature, common instances being railway companies.

Writs of summons to be served upon companies incorporated under the Companies Clauses Consolidation Act, 1845, or the Railway Clauses Consolidation Act, 1845, may be sent through the post to the principal office of the company, or to one of the principal offices where there is more than one, or by giving it personally to the secretary, or, where there is no secretary, by giving it to one of the directors of the company.[3]

[1] 7 Will. IV. & 1 Vict. c. 73, s. 26.

[2] 8 & 9 Vict. c. 16, amended by 26 & 27 Vict. c. 118, and 32 & 33 Vict. c. 48.

[3] 8 & 9 Vict. c. 16, s. 135; 8 & 9 Vict. c. 20, s. 138.

In the case of a company incorporated under the Lands Clauses Consolidation Act, 1845, the writ may be sent through the post to the principal office of the promoters, or to one of the principal offices where there is more than one, or by giving it or posting it to the secretary, or the solicitors of the promoters where there is no secretary.[1]

4. *Banking Companies formed under* 7 *Geo. IV. c.* 46.

All banking companies regulated by this Act must have been formed before the year 1844.[2] It is still in force as to companies formed before the 6th of May, 1844, and not registered under the Companies Act, 1862.[3] These companies, although partnerships, possess many privileges which ordinary partnerships do not, the principal of which is the right of suing and being sued in the name of some Public Officer.[4] These privileges were acquired and are retained by sending to the Stamp Office once a year, between the 28th of February and 25th of March, a return of—(1.) The name of

[1] 8 & 9 Vict. c. 18, s. 134.

[2] 7 & 8 Vict. c. 110.

[3] *Post*, p. 9.

[4] Companies possessing the power to sue and be sued in the name of a public officer are (1.) Cost Book Mining Companies within the jurisdiction of the Stannaries; (2.) Companies under 7 Geo. IV. c. 46; (3.) Companies formed by Letters Patent under the 7 Will. IV. & 1 Vict. c. 73; (4.) Private companies specially possessing this power.

the company; (2.) The names and addresses of the members; (3) The name of every bank established by it; (4.) The names and addresses of two or more persons members of the co-partnership resident in England, together with their titles of office, who have been appointed Public Officers of the company; (5.) The name of every town and place where any bills or notes are issued. These returns must be verified by the oath of one of the Registered Public Officers.

With regard to the second division of joint stock companies, viz., those formed under the Companies Act, 1862, these are by far the most numerous and important, and to them the bulk of these pages will be devoted.

CHAPTER II.

OF THE FORMATION OF A COMPANY UNDER THE COMPANIES ACT, 1862, AND MATTERS INCIDENTAL THERETO, AND THE APPLICATION OF THAT ACT TO COMPANIES NOT FORMED UNDER IT.

THE Companies Act, 1862, provides for the formation of three different kinds of companies, viz.:—

1. Companies limited by shares.
2. Companies limited by guarantee.
3. Unlimited companies.

The chief distinction between these three classes of companies is in the liability of the members. Their liability in the first case is limited to the amount unpaid on their shares.[1] In the second case to the amount which each has undertaken by the memorandum of association to contribute to the assets of the company in the event of its being wound up,[2] and in the third case the liability of the members is unlimited.[3] There are, however, various

[1] The Companies Act, 1862, s. 7.

[2] *Ibid.*

[3] The Companies Act, 1862, s. 10.

other distinctions, which will be noticed further on.

Number of persons required to form a company.

The smallest number of persons who can form a company is seven,[1] and no partnership of more than twenty persons can be formed for the purpose of carrying on any business, that has for its object the acquisition of gain, by the partnership, or by its members, unless it is registered as a company under the Companies Act, 1862, or is formed in pursuance of some other Act of Parliament, or is a company engaged in working mines within and subject to the jurisdiction of the Stannaries.[2] An association of more than twenty persons for the acquisition of gain is an illegal association, unless registered under the Companies Act.[3]

Mutual Marine Insurance Companies,[4] Loan Societies,[5] and Money Clubs[6] come under sec. 4 of the Companies Act, 1862, and must be registered where their members exceed twenty in number.

[1] The Companies Act, 1862, s. 6. Where it carries on business for six months after its members have been reduced below seven, every member cognizant of the fact is personally liable for payment of the whole of the debts of the company contracted during such period, and may be sued for the same without the joinder in the action of any other member. The Companies Act, 1862, s. 48.

[2] The Companies Act, 1862, s. 4.

[3] *Sykes* v. *Beadon*, 11 Ch. D. 170; but see *Smith* v. *Anderson*, 15 Ch. D. 247.

[4] *Padstow Total Loss and Collision Assurance Association*, 20 Ch. D. 137.

[5] *Jennings* v. *Hammond*, 9 Q. B. D. 225; *Shaw* v. *Benson*, 11 Q. B. D. 563.

[6] *Ex parte Poppleton*, 14 Q. B. D. 379.

The section does not apply to companies formed before the commencement of the Act of 1862, even although the original members may have changed.[1]

Banking companies.

Banking partnerships in this respect are on a peculiar footing, as they must be registered if the number of partners exceeds ten.[2]

Promoters.

The persons originally forming a company are called the promoters, and their first step is usually the publication of a prospectus, as to which it may be noticed that a promoter will be liable to make good to an allottee of shares, any damage which he may have sustained by taking shares on the faith of an untrue statement;[3] and if the objects for which the company is formed differ in the memorandum of association from the prospectus, any person who has agreed to take shares will not be liable as a shareholder.[4]

Prospectus.

A solicitor by merely acting as solicitor to a company in its early stages, does not become a "promoter."[5]

Contracts entered into by the company or promoters.

Every prospectus of a company, and every notice inviting persons to subscribe for shares, must specify the dates and the names of the parties to any contract entered into by the company, or the

[1] *Shaw* v. *Simmons*, 12 Q. B. D. 117.

[2] The Companies Act, 1862, s. 4.

[3] As to what amounts to a misrepresentation, see *Gerhard* v. *Bates*, 2 Ell. & Bl. 476.

[4] *Fox* v. *Clifton*, 6 Bing. 776.

[5] *Great Wheal Polgooth*, 49 L. T. N. S. 20.

promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or trustees or otherwise; or such prospectus or notice will be deemed fraudulent on the part of the promoters, directors, and officers of the company, knowingly issuing the same, as regards any person taking shares in the company, on the faith of the prospectus, unless he had notice of such contract.[1]

What contracts must be disclosed.

This section of the Act is an extremely difficult one, and has caused much difference of judicial opinion; on the balance of authority, the law must at present be taken to be that the prospectus must disclose not only contracts which impose an obligation on the company, but also all contracts entered into by the promoters, &c., whether before or after they become promoters, &c., which relate to the company's affairs.[2]

Remedy of shareholder where the contract is not disclosed.

When the shareholder comes within the terms of the section he has a remedy against the promoter, &c., personally for damages,[3] but he is not entitled to rescind the contract and to have his name removed from the list of shareholders.[4]

How far the company is bound by contracts entered into by the promoters.

A company is of course not liable for the acts

[1] The Companies Act, 1867, s. 38.

[2] Buckley, 4th ed., p. 504. See hereon also *Cornell* v. *Hay*, L. R. 8 C. P. 328; *Gover's Case*, 1 Ch. D. 200; *Twycross* v. *Grant*, 2 C. P. D. 485.

[3] *Charlton* v. *Hay*, 31 L. T. 437; 23 W. R. 129; *Twycross* v. *Grant*, 2 C. P. D. 469.

[4] *Gover's Case*, L. R. 20 Eq. 114; 1 Ch. D. 182 (diss. Brett, L.J.); Buckley, 3rd ed., p. 458.

and engagements of its promoters, unless it is expressly stipulated in its charter, Act of Parliament, or deed of settlement, that it should be.

If, however, a company has acquired property, or exercised rights in pursuance of an engagement entered into by its promoters, it will not be permitted to withdraw from such engagement, if it is one which would have bound the company had it been entered into after its formation.[1] It appears now settled both at law and in equity "that a company cannot ratify a contract made on its behalf before it came into existence, cannot ratify a nullity. The only thing that results from what is called a ratification or adoption of such a contract is not the ratification or adoption of a contract *qua* contract, but the creation of an equitable liability, depending on equitable grounds."[2]

Memorandum of association.

The next step is the preparation of the memorandum of association. This is a memorandum containing particulars of the company, which is required to be registered with the registrar of joint stock companies; the requisites which it must contain differ according to the class to which the company belongs.

[1] *Edwards* v. *The Grand Junction Canal Ry. Co.*, 1 My. & Cr. 650.

[2] *Per* James, L.J., in *In re Empress Engineering Co.*, 16 Ch. D. 130; see also *In re Hereford and South Wales Waggon and Engineering Company*, 2 Ch. D. 621; and Buckley, 4th ed., p. 470, note (*y*).

Its requisites in a company limited by shares.

Where the company is limited by shares, these requisites are:

1. The name of the proposed company, with the addition of the word "limited" as the last word in such name.
2. Where the registered office is to be situated.
3. The objects of the company.
4. A declaration that the liability of the company is limited.
5. The amount of capital and the shares into which it is divided.

Subject to the following regulations:

1. That no subscriber shall take less than one share.
2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.[1]

Its requisites in a company limited by guarantee.

Where the company is limited by guarantee its memorandum of association must contain the first three of the last-mentioned requisites, and

4. A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he

[1] The Companies Act, 1862, s. 8.

ceases to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.[1]

In an unlimited company.

Where the company is unlimited the memorandum of association need only contain the first three requisites of a company limited by shares.[2]

Articles of association.

The memorandum of association may, in the case of a company limited by shares, and must, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association. The articles of association contain the rules and regulations, and specify the mode of conducting business, the number and qualifications of the directors, and generally the whole internal organization of the company, and answer, in fact, to articles of partnership.[3] They must be in separate paragraphs numbered arithmetically,[4] must be printed, and a sum of 5*s*. is

[1] *Ibid.* s. 9.

[2] The Companies Act, 1862, s. 10.

[3] The articles of association usually contain clauses regulating the general business of the company in reference to the division of the capital, the issue of shares, increase of capital, calls, forfeiture for non-payment, &c., borrowing powers, general meetings, voting, directors and their qualifications, powers, duties, &c., dividends accounts, audits, notices, arbitration clause, &c.

[4] The Companies Act, 1862, s. 14.

payable on their registration. The schedule to the Act contains a table (marked "A") of provisions, all or any of which may be adopted in the articles of association.[1] In the case of a company limited by shares, if it has no articles of association, or where it has articles of association, so far as the provisions of the table are not excluded or modified by them, Table "A" is to be deemed to be the regulations of the company.[2] The articles of association can be altered by a special resolution,[3] and a company cannot contract itself out of its power of making such alteration.[4]

Both the memorandum and articles of association bear a 10*s.* stamp, and must be signed by each subscriber, in the presence of and attested by one witness at least, and when registered, bind the company and the members thereof, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were therein contained a covenant on the part of himself, his heirs, executors, and administrators, to observe all the conditions of the memorandum, and to conform to all the regulations contained in the articles subject to the provisions of the Act.[5] The number of subscribers must not be less than seven. Where

Number of subscribers.

[1] *Ibid.* s. 14.

[2] *Ibid.* s. 15.

[3] The Companies Act, 1862, s. 50.

[4] *Walker* v. *The London Tramway Company*, 49 L. J. Ch. 23.

[5] The Companies Act, 1862, ss. 11 and 16.

one of seven subscribers was an infant at the time of registration, the company was, nevertheless, held to be effectually incorporated.[1]

Money due from a member to the company deemed to be a specialty debt.

All monies payable by any members to the company in pursuance of the conditions and regulations of the company are deemed to be a debt due from such member to the company in the nature of a specialty debt.[2]

The memorandum and articles of association must be delivered to the registrar of joint stock companies, who registers them,[3] upon payment of fees varying, in the case of a company having its capital divided into shares, with the amount of its capital, and in the case of a company not having its capital divided into shares, with the number of its members.[4]

Copies of memorandum and articles of association.

Each member is entitled to have a copy of the memorandum and articles of association (if any) forwarded to him on payment of the sum of 1*s.*, or any less sum prescribed by the company, for each copy. Any company making default in forwarding a copy of the memorandum of association and articles incurs a penalty of not exceeding one pound.[5] Upon registration the company becomes incorporated with power to hold lands. The certificate of the incorporation of

[1] *Nassau Company*, 2 Ch. D. 610.

[2] The Companies Act, 1862, s. 16.

[3] The Companies Act, 1862, s. 17.

[4] *Ibid.* Schedule 1, Table A. See Appendix.

[5] *Ibid.* s. 19.

any company given by the registrar is conclusive evidence that all the requisitions of the Act in respect of registration have been complied with.[1] By the Companies Act, 1877,[2] any certificate of the incorporation of any company given by the registrar or assistant registrar is to be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at any of the offices for the registration of joint stock companies, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, is in all legal proceedings whatsoever to be received in evidence as of equal validity with the original document.

The definition of the objects of the company in the memorandum of association requires particular attention, and they should be described sufficiently broadly to include every business which the company is likely to be engaged in, as there is no power in the Act to alter the memorandum of association so as to extend the scope of the company.

Why the memorandum cannot be changed.

To understand this the reader must remember that a company is a fictitious person (a corporation) existing only for certain purposes. These purposes are the *objects* set out in the memorandum of associa-

[1] The Companies Act, 1862, s. 18.

[2] The Companies Act, 1877 (40 & 41 Vict. c. 26), s. 6.

tion, and it would be grossly unfair to shareholders who have entered into the company on the faith of the representation contained in the memorandum that the company is going to carry on a particular business, if a majority of the shareholders could make the company embark on some different business. Any transactions outside the scope of the objects of the company as defined by its memorandum are said to be *ultra vires*, and any authority given to the directors of the company is always to be construed as subject to the paramount and inherent restriction that such authority will not justify acts outside the scope of the objects for which the company was formed.[1]

Ultra vires.

In *Guinness* v. *Land Corporation of Dublin*,[2] the objects of the company were the cultivation of land in Ireland and other similar purposes specified in the memorandum of association, and to do all other things which the company might deem incidental or conducive to the attainment of any of these objects. The capital was divided into A. & B. shares. One of the articles of association provided that the capital produced by the issue of B. shares should be invested, and that the income, and, so far as necessary, the capital produced by the issue of B. shares should be applied so as to make good to the holders of A. shares a preferential dividend of 5*l.* per cent. on the amounts paid up on the A. shares. The

[1] *Pickering* v. *Stephenson*, 14 Eq. 322.

[2] 22 Ch. D. 349.

Court of Appeal decided that this provision was invalid on the ground that it purported to make the B. capital available for purposes not within the objects of the company, as defined by the memorandum of association.

Change of company's name.

The name of the company may be changed with the sanction of a special resolution, and with the approval of the Board of Trade. No alteration of name affects any rights or obligations of the company or renders defective any legal proceedings instituted by or against the company.[1]

Increase of capital.

A company may increase its capital by the issue of new shares. It may also consolidate and divide its capital into shares of larger amount, or convert its paid-up shares into stock.[2] Any such increase or consolidation must be made by special resolution. Notice of such increase,[3] consolidation, division, or conversion, specifying the shares, must be given to the registrar of joint stock companies.[4]

Reduction of capital.

A company limited by shares may reduce its capital. The reduction must be authorised by its articles of association—and be by a special resolution—but the resolution for the reduction of capital will not come into operation until an order of the Court confirming the reduction has been obtained.[5]

[1] The Companies Act, 1862, s. 13.

[2] *Ibid.* s. 12.

[3] The Companies Act, 1862, s. 34.

[4] The Companies Act, 1862, s. 28.

[5] The Companies Act, 1867, s. 9.

The application to the Court to confirm the reduction is by petition,[1] and the creditors of the company may appear and oppose the proposed reduction.[2] The company must add to its name the words "and reduced" as the last words in its name from the date of the passing of the resolution to such time as the Court may fix.[3]

The purchasing of shares by the company not for profit, but for carrying into operation an arrangement considered to be for the benefit of the company, is not a reduction of capital in any sense in which such reduction is prohibited by the Companies Acts.[4]

[1] The Companies Act, 1867, s. 11. The petition is entitled in the matter of "The Companies Act, 1867," and of the company in question, (Gen. Orders, 1868, rule 2) and must be advertised. A list of the creditors must be filed and copies of the list must be kept at the office of the company, and their solicitors and London agents, which copies may be inspected by any one on payment of 1*s*. Notice of the proposed reduction of capital must be sent to the creditors by prepaid letter and advertised. The advertisement must state where the list of creditors can be inspected, and the time within which the creditors must send in their claims. An affidavit must be filed that these requisites have been complied with. Creditors may be required to prove their debts in the same way as in a winding up. The chief clerk then certifies who are the creditors, and how far they have consented to the reduction. The petition cannot be placed on the list of petitions until eight days after the filing of the chief clerk's certificate. Notice of the hearing must be advertised. As to proceedings on a petition to reduce capital, see Gen. Orders, 1868, rules 3–20.

[2] The Companies Act, 1867, s. 13.

[3] *Ibid.* s. 10.

[4] *Dronfield Silkstone Co.*, 17 Ch. D. 76.

Cancelling lost capital.

The word "capital" includes paid-up capital; and the power to reduce capital includes a power to cancel any lost capital, or any capital unrepresented by available assets or to pay off any capital which may be in excess of the wants of the company. Paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company.[1]

When creditors cannot object to reduction.

Where, however, the reduction of capital does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of paid-up capital—

(*a.*) The creditors are not (unless the Court otherwise directs) entitled to object to the reduction.

When the words "and reduced" may be dispensed with.

(*b.*) The Court may dispense altogether with the addition of the words "and reduced" to the name of the company.[2]

Power to reduce capital by cancellation of unissued shares.

Shares which have not been taken or agreed to be taken may be cancelled without the sanction of the Court.[3]

Company may be required to publish reasons for reduction.

The Court may, if it thinks fit, require the company to publish the reasons of, or any information in regard to the reduction of its capital or the causes which led to such reduction.[4]

Shares may be divided into shares of smaller amount.

The capital of the company or any part of it may be divided into shares of smaller amount. Such

[1] The Companies Act, 1877, s. 3.

[2] The Companies Act, 1877, s. 4.

[3] *Ibid.* s. 5.

[4] The Companies Act, 1879, s. 4.

division must be made by special resolution. On any such division the proportion between the amount which is paid, and the amount which is unpaid, on each share, is the same as before the reduction.[1]

Provision that reserve capital of company not to be called up except in case of winding up.

It may be provided by special resolution that any portion of the capital which has not been already called up, shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.[2]

An unlimited company registering as a limited one may, by the resolution assenting to the registration as a limited company, increase the nominal amount of the company's capital by increasing the nominal amount of the shares.

When this is done no part of such increased capital is capable of being called up, except for the purposes of the company's winding up.

When no such increase is resolved upon, the company may, by the same resolution, provide that a portion of its uncalled capital shall not be capable of being called up except for the purposes of the winding up.[3]

Accumulated profits may be returned to shareholders in reduction of paid-up capital.

When a company has accumulated profits which may, with the consent of the shareholders, be divided amongst them as dividends or bonus, such profits may, by special resolution, be returned to the shareholders in reduction of the paid up capital of

[1] The Companies Act, 1867, s. 5.

[2] The Companies Act, 1879, s. 21.

[3] *Ibid.*

the company, the unpaid capital being thereby increased by a similar amount. The directors have the same power of calling up the money so returned as they have in respect of the rest of the unpaid capital.[1]

Memorandum of reduction must be registered.

A memorandum showing that all requisites for the reduction of capital have been complied with, must be registered with the registrar of joint stock companies, and the resolution will have no effect until this is done.[2]

Shareholder may require money returned on his shares to be invested.

A shareholder, instead of taking the money paid in respect of his shares, may require the company to retain it. The company must in such case invest the money. The amount so retained and invested represents the future calls which may be made to replace the capital reduced on the shares, whether the amount obtained on the sale of the whole or such proportion of the investment as represents the amount of any call when made, produces more or less than the amount of such call.[3]

Any alteration in the memorandum of association must be authorised by the articles.

The articles may be altered by special resolution.

In each of these cases it must be remembered that any alteration in the memorandum of association must be authorised by the regulations contained in the articles of association; these may, however, subject to the provisions of the Act and to the conditions contained in the memorandum of association, be altered in general meeting from time to time by special resolution.[4]

[1] The Companies Act, 1880, s. 3.

[2] *Ibid.* s. 4.

[3] *Ibid.* s. 5.

[4] The Companies Act, 1862, s. 50.

Companies formed for the purpose of promoting art, science, literature, religion, charity, or any other object not involving the acquisition of gain by the company or by the individual members thereof, were not considered at common law as partnerships, and such a company may, by the licence of the Board of Trade, be registered with limited liability without the addition of the word "limited" to its name,[1] but cannot, without the sanction of the Board of Trade, hold more than two acres of land; the Board of Trade may, however, by licence under the hand of one of their principal or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit.[2]

Companies formed for charity, &c.

Every company must have a registered office,[3] and must give notice to the registrar of joint stock companies of any change thereof;[4] by carrying on business without having such office or by not giving notice of a change of office it incurs a penalty of not exceeding £5 per day.[5] Every limited company must keep its name conspicuously

Registered office.

Name of limited company to be painted up.

[1] The Companies Act, 1867, s. 23.

[2] The Companies Act, 1862, s. 21. For form of licence, see Appendix.

[3] The Companies Act, 1862, s. 39.

[4] *Ibid.* s. 40.

[5] The Companies Act, 1862, ss. 39 & 40. The penalty under these and the 19th section is imposed on the company alone, but in some other sections of the Act (ss. 25, 27, 32 & 34), a penalty is also imposed on the directors or managers.

and legibly painted or affixed on the outside of every office or place in which the business of the company is carried on, and have its name legibly engraved on its seal, and mentioned in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods, purporting to be signed by, or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.[1] It must also keep a register of all mortgages and charges affecting the property of the company.[2] This register, which must contain a short description of the property charged, the amount of charge and name of mortgagee, is open to the inspection of any creditor or member of the company.[3]

Register of mortgages.

Limited banking companies.

Every limited banking company, and every insurance company, deposit, provident or benefit society, must, before it commences business, and also on the first Monday in February and the first Monday in August, in every year, make a statement of its capital, liabilities and assets, in a prescribed form, and a copy of such statement must be put up in a conspicuous place in the registered office of the company, and in every branch or place where the business of the company is carried on.[4]

[1] The Companies Act, 1862, s. 41. Various penalties are provided by the Act for breach of this provision. See s. 42.

[2] *Ibid.* s. 43.

[3] *Ibid.*

[4] The Companies Act, 1862, s. 44. For form of statement, see Appendix.

Change of an unlimited company into a limited one.

Any company registered as an unlimited company may register as a limited company.

The registration of an unlimited company as a limited company does not prejudice any debts, liabilities, obligations, or contracts incurred or entered into by the company prior to registration.[1]

Notwithstanding any provisions to the contrary in its charter, &c.

An unlimited company may register as a limited one, notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company.[2]

Powers of mortgaging property of a company.

No express power is required to authorise a company to mortgage its property, and it may do so as freely as an individual unless prevented by its articles of association from doing so.[3] But it has no power to mortgage or charge future calls unless specially authorised by its articles to do so.[4]

Banking companies.

Banking partnerships, as has been before mentioned, require registration as companies when the number of partners exceeds ten.

No limited liability as regards bank notes.

Any banking company claiming to issue notes in the United Kingdom is not entitled to limited liability in respect of such issue,[5] and the members are liable for the whole amount of the issue in

[1] The Companies Act, 1879, s. 4.

[2] *Ibid.* s. 10.

[3] *Bath's Case*, 8 Ch. D. 334.

[4] *Phœnix Bessemer Steel Co.*, 32 L. T. 854; 44 L. J. Ch. 683; see also Buckley, 4th ed., p. 151, and cases there noted.

[5] The Companies Act, 1862, s. 182.

addition to the sum for which they are liable on their shares or guarantee.

In the event of a banking company being wound up, in case the general assets are insufficient to satisfy the claims of both the noteholders and the general creditors, the members, after satisfying the remaining demands of the noteholders, are liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the noteholders out of the general assets of the company.

Any bank of issue registered as a limited company can make a statement on its notes to the effect that its limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.[1]

Audit of accounts of banking company.

Once at least in every year the accounts of every banking company registered as a limited company must be examined by an auditor or auditors, who must be elected annually by the company in general meeting.[2]

Director or officer cannot be auditor.

A director or officer of the company is not capable of being elected auditor of such company.[3] An auditor on quitting office is re-eligible.[4]

[1] The Companies Act, 1879, s. 6. For the purposes of this section, the expression "The general assets of the company" means the funds available for payment of the general creditors as well as the note holders. *Ibid.*

[2] The Companies Act, 1879, s. 7, ss. 1.

[3] *Ibid.* s. 7, ss. 2.

[4] *Ibid.* s. 7, ss. 3.

On any casual vacancy in the office of auditor the surviving auditor (if any) may act, but if there is no surviving auditor, the directors must forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.[1]

Powers of auditor.

The auditor must have a list delivered to him of all books kept by the company, and must also have access to the books and accounts of the company. He may examine the directors or officers of the company in relation to the books and accounts.

If the banking company has branch banks beyond the limits of Europe it will be sufficient if the auditor is allowed access to such copies of or extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.[2]

Report on accounts.

The auditor or auditors must make a report to the members on the accounts, and on a balance sheet which must be laid before the company in general meeting. The report must state whether in the opinion of the auditors the balance sheet is a full and fair one, properly drawn up so as to exhibit a true and correct state of the company's affairs as shown by its books. The auditor's report must be read before the company in general meeting. The remuneration of the auditors is fixed by the general

[1] The Companies Act, 1879, s. 7, ss. 4.

[2] *Ibid.* s. 7, ss. 5.

meeting appointing them, and is paid by the company.[1]

Balance sheets to be signed by auditors.

Balance sheets submitted to general meetings must be signed by the auditor or auditors, by the secretary or manager if any, and by the directors of the company or three of such directors at least.[2]

Power to strike the name of a defunct company off the register.

If the registrar of joint stock companies has reasonable cause to believe that a company is not carrying on business or in operation he must send to the company by post a letter inquiring if it is carrying on business or in operation.

If he receive no reply within a month, he, within fourteen days after the expiration of the month, sends a registered letter to the company referring to the first, and stating that no answer has been received thereto, and that if an answer is not received to the second letter within one month a notice will be published in the Gazette with a view to striking the name of the company off the register.

If the registrar receives an answer that the company is not carrying on business, or receives no answer within a month from the second letter, he publishes in the Gazette and sends a notice to the company, that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will be struck off the register,

[1] The Companies Act, 1879, s. 7, ss. 6.

[2] The Companies Act, 1879 s. 9.

and the company dissolved, unless cause is shown to the contrary.[1]

Service of writs and other proceedings upon a company.

In an action against a company (formed under the Companies Act, 1862,) any summons, notice, order or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company at their registered office.[2] The document must be posted in due time to admit of its being delivered within the period prescribed for its service. In proving service of the document it is sufficient to prove that the document was properly directed and was put as a prepaid letter into the post-office.[3]

Upon a foreign corporation.

A writ of summons against a foreign corporation having a branch office in England may (when the cause of action has arisen in England) be served on the head officer in England of the corporation.[4] The booking-clerk of a Scotch railway was held not to be a "head officer" for this purpose, although he was the only official at the place of business in England,[5] but a duly appointed superintendent appears to be a "head officer," on whom service may be made.[6]

[1] The Companies Act, 1880, ss. 1–4.

[2] The Companies Act, 1862, s. 62. For service on companies formed under other Acts, see Chap. I.

[3] The Companies Act, 1862, s. 63.

[4] *Newby* v. *Van Oppen*, L. R. 7 Q. B. 293.

[5] *Mackereth* v. *Glasgow & S. W. Ry. Co.*, L. R. 8 Ex. 149.

[6] *R. M. S. Packet Co.* v. *Braham*, 2 App. Cas. 381.

In action by or against a company, the opposite party may obtain an order to deliver interrogatories to any member or officer of the company.[1]

Life assurance companies.

Every life assurance company established after the 9th of August, 1870, and every company commencing to carry on the business of life assurance after that date must, if it carries on business within the United Kingdom, deposit the sum of £20,000 with the Court of Chancery.[2] This deposit may be made by the subscribers of the memorandum of association of the company, or any of them, in the name of the proposed company, and is deemed to form part of the assets of the company.[3] The deposit is invested by the Court, and the income paid to the company. No certificate of incorporation is to be issued until the deposit has been made. The deposit is to be returned to the company as soon as its life assurance fund, accumulated out of the premiums, has amounted to 40,000.[4] Until returned to the company the deposit is deemed to form part of the life assurance fund of the company.[5] When such a company carries on other business besides that of life assurance, a separate account must be kept of all receipts in respect of the life assurance and annuity contracts of the

Deposit to be made by life assurance companies.

[1] R. S. C. 1883, Ord. XXXI. rule 5.

[2] 33 & 34 Vict. c. 61, s. 3; 34 & 35 Vict. c. 58, s. 1.

[3] 35 & 36 Vict. c. 41, s. 1.

[4] 33 & 34 Vict. c. 61, s. 3.

[5] 35 & 36 Vict. c. 41, s. 1. As to payment of deposit into or out of Court, see Rules of the Board of Trade, 28th August, 1872.

company. Such receipts must form a separate fund, called the life assurance fund of the company, and be as absolutely the security of the life policy and annuity holders as though the company carried on no business other than that of life assurance.[1]

Statements of account by.

Life assurance companies are also required to make annual statements of accounts, and reports on their financial condition at less frequent intervals, and printed copies of the accounts and reports must be furnished to the share and policy-holders of the company when required by them.[2]

Amalgamations of life assurance companies.

Any amalgamation of two or more life assurance companies must be sanctioned by the Court on petition. This sanction cannot be given if policy-holders representing one-tenth or more of the total amount assured dissent to the amalgamation.[3]

A life assurance company may be wound up on the application of one or more of the policy-holders on proof of its insolvency. In determining whether the company is insolvent or not, the Court takes into account its contingent or prospective liability under policies and annuities and other existing contracts. No hearing is granted to the petition until both security for costs is given and a *primâ facie* case made out to the satisfaction of the judge. In the case of a proprietary company, the Court suspends proceedings—on the petition—for a rea-

A life assurance company may be wound up on the petition of a policy-holder on the ground of insolvency.

[1] 33 & 34 Vict. c. 61, s. 4; 35 & 36 Vict. c. 41, s. 2.

[2] 33 & 34 Vict. c. 61, ss. 5–11.

[3] 33 & 34 Vict. c. 61, s. 15.

sonable time, to allow calls to be made to produce a sufficient amount of assets to meet the liabilities.[1]

There are, however, a large number of joint stock companies not formed under the Companies Act, 1862; with regard to these that Act specially provides, that every company consisting of seven or more members, and formed in pursuance of any Act of Parliament, other than the Companies Act, 1862, or otherwise duly constituted by law, may,

[1] 33 & 34 Vict. c. 61, s. 21. As to the winding up of subsidiary life assurance companies, see 35 & 36 Vict. c. 41, s. 4. On the winding up of a life assurance company the value of the life annuities and life policies is estimated in manner provided by the following rules: *Rule for valuing an annuity.*—An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and where such table cannot be ascertained or adopted to the satisfaction of the Court, then according to the table known as the Government Annuities Experience Table, interest being reckoned at the rate of 4 per cent. per annum. *Rule for valuing a policy.*—The value of a policy is to be the difference between the present value of the reversion in the sum assured on the decease of the life, including any bonus or addition thereto made before the commencement of the winding up and the present value of the future annual premiums. In calculating such present value the rate of interest is to be assumed as being 4 per cent. per annum, and the rate of mortality as that of the tables known as the Seventeen Offices Experience Tables. The premium to be calculated is to be such premium as, according to such rate of interest and rate of mortality, is sufficient to provide for the risk incurred by the office in issuing the policy exclusive of any addition thereto for office expenses and other charges, 35 & 36 Vict. c. 41, s. 5, and Schedule I.

with one unimportant exception, register under the Companies Act, 1862,[1] and will, when so registered, except in one or two unimportant particulars, be subject to its provisions in the same way as a company formed under the Act.

The one class of companies which may not register under the Act, are mutual companies enjoying limited liability by virtue of Act of Parliament or letters patent:—probably no such company exists; but the reason of excluding them from the privilege of registering, is the inapplicability, to such companies, of the provisions for winding-up.[2] The Companies Act, 1862, also contains provisions for the compulsory winding-up of companies not registered under the Act;[3] such companies cannot be wound-up voluntarily or under the supervision of the Court, but only by the Court.

As both the registration under the Act, of companies formed in some other way, and the winding up of unregistered companies seldom occur in practice, they are beyond the scope of a work of this size, and the reader is referred for further particulars on these points to the Acts themselves.

[1] The Companies Act, 1862, s. 180.

[2] Thring on Joint Stock Companies, 3rd ed. p. 199.

[3] The Companies Act, 1862, ss. 199–204.

CHAPTER III.

OF THE RIGHTS AND LIABILITIES OF MEMBERS, THE NATURE AND TRANSFERS OF SHARES, THE MANAGEMENT OF A COMPANY, AND A SPECIAL AND EXTRAORDINARY RESOLUTION.

EVERY company is required to keep a list of its members, that is, of the members composing it.[1] The register must be open to inspection during business hours between 10 and 4 o'clock,[2] gratis to members, and on payment of a sum not exceeding 1*s.* to others.[3] The company has power to close the register for any period not exceeding thirty days in each year.[4] Every company having its capital divided into shares is required to forward yearly a list of its members, together with other particulars, to the registrar of joint stock companies.[5]

A company whose objects comprise the transaction of business in a colony may keep in any colony where it does business, a colonial register for the members resident in that colony.

Notice of the office where this branch or colonial

[1] 30 Vict. c. 29, s. 2.

[2] The Companies Act, 1862, s. 32.

[3] *Ibid.* s. 33.

[4] *Ibid.* s. 23.

[5] *Ibid.* s. 26. For form of list, see Appendix.

registry is kept, and of any changes in or discontinuance of this office must be given to the registrar of joint stock companies.

The colonial register is deemed to be part of the company's register of members, and is *primâ facie* evidence of all matters entered in it.

Entries in the colonial register are to be transmitted to the registered office of the company as soon as may be after they are made, and a duplicate of its colonial register is to be kept at the registered office.[1]

Remedy for improper entry or omission of entry on the register.

If the name of any person is, without sufficient cause, entered or omitted from the register of members, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself may, by motion in any of Her Majesty's Superior Courts of Law or Equity, or by application in Chambers, or to the Vice Warden of the Stannaries, if the company be under his jurisdiction, or in such other manner as the Court may direct, apply for an order of the Court that the register may be rectified; and the Court may, if satisfied of the justice of the case, make an order for the rectification of the register. The Court may, on any such application, decide on any question relating to the title of any

[1] The Companies (Colonial Registers) Act, 1883 (46 & 47 Vict. c. 30), s. 3.

person, who is a party to such proceedings, to have his name entered on or omitted from the register, and generally the Court may, in any such proceedings, decide any question that may be necessary or expedient to decide for the rectification of the register.[1]

Any rectification of the colonial register of a company must be made by a competent Court of the colony in which the register is kept.[2]

Misrepresentation.

Where any person has been induced by the misrepresentation, either of an individual or of the company, to become a member, his proper course is to proceed against the individual or directors by action, and to make application in the manner before mentioned, to have his name taken off the list of members and for rectification of the register. He must, however, do this before a petition for winding-up the company has been presented, as a contributory in a winding-up under the Act of 1862, cannot plead the fact of his having been induced to take his shares by misrepresentation, as a reason for his being struck off the list of contributories.[3]

Exaggeration in prospectus.

The rule that exaggeration as distinguished from misrepresentation will not invalidate a contract, applies with peculiar force to companies. The promoters of adventures are so prone to form

[1] The Companies Act, 1862, s. 35. *In re Hull & County Bank, Burgess's Case*, 15 Ch. D. 507.

[2] 46 & 47 Vict. c. 30, s. 3, ss. 3.

[3] *Oakes* v. *Turquand*, L. R. 2 H. L. 325.

sanguine expectations as to the prospects of the schemes which they introduce to the public, that some high climbing and exaggeration in the description of the advantages which are likely to be enjoyed by the subscribers to the undertaking, may generally be expected in such documents. No prudent man, can, owing to the well-known prevalence of exaggeration in such documents, accept the prospectus which is held out by the originators of every new scheme without considerable abatement. But though the prospectus of a new company ought not to be tried by as strict a test as is applied in other cases, it is required to be fair, honest, and *bonâ fide*. There must be no misstatement of any material facts or circumstances.[1]

Contracts to take shares are governed by the same rules as other contracts, and to constitute a binding agreement to take shares, the letter of application must be followed by allotment, which must be communicated to the applicant.[2] Mere allotment and entry of the applicant's name on the register is not sufficient to bind him, as it is not the duty of the applicant to see whether the allotment has been made or not. The notice of allotment need not be

Contracts to take shares.

[1] Kerr on Fraud, p. 44. See hereon *Bellairs* v. *Tucker*, 13 Q. B. D. 562; *Smith* v. *Chadwick*, 9 App. Cas. 187.

[2] *Pellat's Case*, L. R. 2 Ch. 527; 1 *Hebb's Case*, L. R. 4 Eq. 9; *Gunn's Case*, L. R. 3 Ch. 40; *Sahlgreen & Carrall's Case*, L. R. 3 Ch. 323; *Fletcher's Case*, 37 L. J. Ch. 49; 16 W. R. 75; 17 L. T. 136; *Tothill's Case*, L. R. 1 Ch. 85; *Ward's Case*, L. R. 10 Eq. 659, 662.

communicated in writing, but there must be notice verbal or in writing to show the applicant that the company has accepted his offer.[1]

Transfer of shares.

In scrip companies, and in limited companies where the shares have been fully paid up,[2] mere delivery constitutes a sufficient transfer; but generally shares are only transferable by deed or writing under seal.

By the Companies Act, 1862, shares in companies under that Act are to be transferred in manner provided by the regulations of the company.[3] The form provided by the Act is to be executed by both transferor and transferee.[4] It is very common for the transfer of shares to be subject to certain restrictions, the most usual one being that all calls shall have been previously paid, while another often is that the directors shall consent to the transfer. In such a case the directors are in the position of trustees being bound to act *bonâ fide* and not capriciously.[5] Subject to any such regulations the right of transfer is absolute, so that a conveyance to a pauper will be valid unless made fraudulently.[6]

Contributories.

The term "contributory" means every person liable to contribute to the assets of the company in

[1] *Gunn's Case, supra; Ex p. Fox*, 11 W. R. 577; 2 N. R 1; 8 L. T. 223; *Land Shipping Co.*, 18 L. T. 786.

[2] The Companies Act, 1867, s. 27.

[3] The Companies Act, 1862, s. 22.

[4] *Ibid.* Sch. 1, Table A. Art. 9.

[5] *Ex p. Penny*, 8 Ch. 446.

[6] *Weston's Case*, 4 Ch. 20.

the event of its being wound up.[1] Contributories are divided into two classes: (1) Present members; (2) Past members. (Past members liable as contributories, are persons who have not ceased to be members for a period of a year or upwards prior to the commencement of the winding-up.) Where the company is limited by shares or guarantee, no contribution can be required from any member exceeding the amount unpaid on his shares or guarantee. The past members are not liable to contribute, until it appears to the Court, that the existing members are unable to satisfy the contributions required from them, and are then not liable for debts contracted since they ceased to be members. In practice the contributories of a company are divided into two classes: (1) the "A" list; (2) the "B" list. The "A" list consists of the present members, *i.e.*, of those who are members of the company at the commencement of the winding-up. The "B" list consists of past members who have ceased to be members within a year before the commencement of the winding-up. The "A" list is settled as early in the winding-up as possible, but it is the uniform practice of the Court not to settle the "B" list until it has been shown that the present members are unable to satisfy the debts.

Past members.

"A" and "B" list of contributories.

[1] The Companies Act, 1862, s. 74. *In re Whitley Steel's Co.*, 49 L. J. R. (N. S.) Ch. 176. See also *In re Albion Life Assurance Co.*, 15 Ch. D. 79; affirmed on appeal, 16 Ch. D. 83.

A shareholder is only liable as a "B" contributory where he has ceased to be a member for less than a year prior to a *compulsory winding-up*. And a shareholder who has assigned his share is not liable at all in a voluntary winding-up; therefore where shareholders in a company had transferred their shares less than a year before a resolution of the company for a voluntary winding-up, but more than a year before a subsequent compulsory order for winding-up, they were held to be not liable to be placed on the list of contributories.[1]

Liability of "B" contributories.

The "A" contributories are primarily liable to pay the debts, and must be first individually exhausted before any "B" contributory can be called upon. The liability of a "B" contributory does not arise until all the assets of the company (including the "A" contributions) have been applied in payment *pari passu* of all the debts of the company, and is then limited:

1. In the case of a limited company—To the amount left unpaid on his shares by the corresponding "A" contributory.
2. To such *residuum* of the debts contracted before he ceased to be a member as still remain undischarged.[2]

Court will not marshal in favour of creditors.

The Court will not marshal in favour of the creditors, but will first apply the funds obtained from the "A" contributories to all the debts

[1] *Taurine Co.*, 25 Ch. D. 118.

[2] Buckley on Joint Stock Companies, 4th ed. p. 134.

equally, and will then call upon the "B" contributories for those funds only for which they are liable.[1]

The contributions received from the "B" members are not however divided exclusively among the old creditors in respect of whose debts they are paid, but form part of the general assets of the company for the payment of all the creditors.[2]

Successive transfers.

In the case of successive transfers of shares, although as between themselves, each transferor has a right to be indemnified by his transferee, yet as regards the company, every person who has held

[1] Lord Westbury in *Well* v. *Wiffin*, 5 H. L. 728, lays down the rule as follows—"The direction (of section 38) is this: You will apply all that you can get from the existing members in payment of the existing debts, no matter of what date. If after you have done that, there remain debts unsatisfied, so that you have to resort to the members who have passed away from the company within a year, then you will be compelled to classify the residuum of the debts so remaining, and ascertain what part of that residuum is to be attributed to past debts; that is, to debts which pre-existed the transfer made by past members, and what portion is to be attributed to the new debts which have arisen subsequently to the date of the last transfer. When you have ascertained the proportion which is attributable to debts which existed when the transfers were made, then if there have been several transfers within the year, you will be compelled of necessity to sub-divide that portion of the residuum into several portions according as you find that transfers have been made within the past year." See also *Morris' Case*, L. R. 7 Ch. 200.

[2] *In re Accidental and Marine Assurance Corporation*, L. R. 5 Ch. 428.

the shares within a year before the commencement of the winding-up, is liable to be placed upon the "B" list, and the liquidator may place all such persons upon the list, and come upon any one of them for the calls.[1]

Contracts limiting the liability of the members.

The Act does not invalidate any provision contained in any policy of insurance, or other contract, limiting the liability of individual members, or whereby the funds of the company are alone liable in respect of such policy or contract.

Nature of liability of contributory.

The liability of any person to contribute to the assets of a company, under the Companies Act, 1862, in the event of its being wound up, creates a debt in the nature of a specialty, accruing due from such person at the time when his liability commenced, but payable at the time or times when calls are made for enforcing such liability. In the case of the bankruptcy of a contributory, proof may be made against his estate for the estimated value of his liability to future calls as well as calls already made.[2] This, however, cannot be done where the company is a going concern, for then the liability to future calls is incapable of being fairly estimated.[3]

Bankruptcy of contributory.

[1] *Kellock* v. *Enthoven*, L. R. 9 Q. B. 241.

[2] The Companies Act, 1862, s. 75. *Ex p. Pickering, re Pickering*, L. R. 4 Ch. 58; 38 L. J. Bank. 1; 19 L. J. 369; 17 W. R. 38.

[3] *Ex p. Pickering, supra.* A corporation may prove a debt, vote and otherwise act in bankruptcy by any of its officers authorized in that behalf under the seal of the Corporation, Bankruptcy Act, 1883, s. 148.

Transfers of shares in insolvent companies.

Transfers of shares are frequently made, when a company is threatened with insolvency, for the purpose of getting rid of liability; these are good, even when the transferee is a man of straw, if the whole interest in the shares has been *bonâ fide* parted with, and the transferor will only be liable as a "B" contributory, or if the transfer was made more than one year before the commencement of the winding-up, will escape liability altogether, although he knew at the time the transfer was made that the company was hopelessly insolvent.[1]

Transmission of shares on death.

On the death of a shareholder his personal representatives, and as the liabilities attaching to shares are debts charged on the real estate by 3 & 4 Will. IV. c. 104, the devisees of his real estate, or heir-at-law, will be liable to be placed on the list of contributories,[2] but as no liability attaches to the real estate until the personal estate is exhausted,

[1] *De Pass's Case*, 4 De G. & J. 544; *Slater's Case*, 35 Beav. 391; 14 W. R. 446; *Weston's Case*, L. R. 4 Ch. 20. Where, however, the company is situated within the jurisdiction of the Stannaries, the rule is different, as the Stannaries Act, 1869 (32 & 33 Vict. c. 19), s. 35, expressly declares that a transfer for the purpose of getting rid of liability for a nominal or no consideration, or to a person without apparent ability to pay the expenses of working a mine, or to a person in the menial or domestic employment of the transferor, shall be presumed to be fraudulent, and need not be recognised by the company or by the Court on the winding-up. See hereon *In re Wheal Unity Wood Mining Company; Chynowellis' Case*, 15 Ch. D. 13.

[2] Thring on Joint Stock Companies, 3rd ed. pp. 85, 86.

the personal representatives should, in strictness, be first placed upon the list, and then if their means are found insufficient to pay the calls, the devisees should be called upon to supply the deficiency, but in order to prevent needless expense, the Court allows both the personal representatives and the heirs and devisees, to be put, at the same time, upon the list of contributories, when the personal estate is obviously insufficient, in order that the case may be proved once for all against both sets of representatives. In the case of the bankruptcy of a shareholder, his trustee in bankruptcy is placed upon the list, and proof may be made against the bankrupt's estate for the amount of contribution due from him, the liability of the contributory to pay future calls being a debt capable of being fairly estimated.[1] The husband of a female shareholder will in the same way be a contributory in respect of her shares, and the right course is to settle both husband and wife on the list of contributories, so that if the wife survive her liability may survive also,[2] although if she has separate estate, and has contracted on the credit of it, her name will be added to the list in respect of such estate.[3]

On bankruptcy.

On marriage.

Debt owing by

The rights of a contributory with regard to debts

[1] *The Mercantile Mutual Marine Insurance Association*, 5 L. J. Ch. 593.

[2] *Luard's Case*, 1 D. F. & J. 533; *Burlinson's Case*, 3 De G. & Sm. 18; *Sadler's Case*, *Ibid.* 36.

[3] Thring on Joint Stock Companies, 3rd ed. pp. 86, 87.

owing to him, from the company, vary according to the nature of the debt, and company. company to contributory.

The debt may be:—

1. A debt due to him in his character of member, *e.g.*, for dividends.
2. A debt due to him as an ordinary creditor, *e.g.*, for money advanced.

As regards the first class it is expressly provided[1] that no sum due to any member of the company in his character of member, (*e.g.* a dividend payable before the winding up which the member has not received) shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of contributories amongst themselves. Debt due to contributory in his character of member.

The rights of the contributory where his debt is of the second class, formerly were supposed to differ in a "limited" and an "unlimited" company, but are now the same in both cases. The contributory cannot set off his debt, but must first pay all claims due from him to the company, and will then be entitled to receive a dividend on his debt with the other creditors;[2] and it makes no Debt due to contributory as an ordinary creditor, in a "limited" company;

[1] The Companies Act, 1862, s. 38, ss. 7.

[2] *Grissell's Case*, L. R. 1 Ch. App. 528; 35 L. J. Ch. 752; 14 L. T. 843.

in an "unlimited" company.

difference whether the call was made before or after the order for winding-up.[1] If, however, the contributory is bankrupt, the bankruptcy rule prevails, and his trustee may set off against the calls any debt (except one due to the bankrupt as a member) due from the winding-up company to the contributory.[2]

Shares.

The shares of a company formed under the Companies Act, 1862, are personal estate, and each share, in the case of a company having its capital divided into shares, must be distinguished by its appropriate number.[3] They are not goods, wares, or merchandize, within the 17th section of the Statute of Frauds. But any contract or agreement for the sale of shares, or stock, or other interest, in any joint stock banking company, is void, unless such contract or agreement sets forth, in writing, the numbers of the shares, stock, or other interest, in the register of the company, or where there is no register, the persons in

Contracts for sale of shares in Joint Stock Banking Company.

[1] *Calisher's Case*, L. R. 5 Eq. 214; see hereon *Re Paraguassu Tramroad Co., Black's Case*, L. R. 8 Ch. 254; 42 L. J. Ch. 404; 28 L. T. 50; 21 W. R. 249; *In re Whithouse & Co.*, L. R. 9 Ch. D. 595; 47 L. J. Ch. 801; 39 L. T. 415; 27 W. R. 181; *Grissell's Case*, *supra*. *Re West Hartlepool Co., Gunn's Case*, 38 L. T. 139; *Re West of England Bank, Ex p. Branwhite*, 27 W. R. 646; 40 L. T. 652; 48 L. J. Ch. 463.

[2] *In re Duckworth*, L. R. 2 Ch. 578; *Ex p. Cooper*, 15 L. T. 637; *Ex p. Strang*, L. R. 5 Ch. 492. See also *Ex p. Morton*, 17 W. R. 606; 38 L. J. Ch. 390.

[3] The Companies Act, 1862, s. 22.

whose name the shares, stock, or interest, stand as registered proprietors.[1] In *Neilson* v. *James*,[2] it was proved that the custom of the Stock Exchange (contrary to this Act), was to omit the name of the registered proprietor in the bought and sold notes which constitute the agreement on sales of shares in the Stock Exchange. This custom was held to be unreasonable and illegal.

Payment in fully paid-up shares.

Previously to the Companies Act, 1867,[3] shares might be paid for in money's worth, as well as money; and vendors, contractors, and other persons, dealing with the company, might be paid, by the allotment to them of fully paid-up shares.[4] This was found to open a door to fraud, and it was accordingly provided by that Act, that every share must be paid for in cash, unless it is otherwise determined by a contract filed with the registrar of joint stock companies.[5] But if shares which are not paid for in cash are granted to some person, and they are handed over to a purchaser who takes them *bonâ fide* and without notice of the manner in which they were granted, the purchaser is not liable to be placed on the list of contributories in respect of the shares.[6]

[1] 30 Vict. c. 29.

[2] 9 Q. B. D. 546.

[3] 30 & 31 Vict. c. 131.

[4] Thring on Joint Stock Companies, 3rd ed. p. 489.

[5] The Companies Act, 1867, s. 25.

[6] *Burkenshau* v. *Nicholls*, 3

In one case[1] a person who was a director and the solicitor of the company, took by assignment some shares from a vendor to the company, which had been issued to the vendor as fully paid-up. The contract under which the shares were issued had not been registered. It was decided that the assignee's position as director and solicitor did not cast any duty upon him to see that the contract was duly registered, and that he was not liable to be placed upon the list of contributories.

A company may, where so authorized by its articles of association, issue shares at a discount.[2] A contract in writing must in such a case be made between the persons taking the shares and the company, and registered pursuant to sec. 25 of the Act of 1867.

Share warrants.

In a company limited by shares, share-warrants may be issued in respect of shares fully paid-up or stock.[3] The share-warrants pass by delivery, and are negotiable instruments,[4] payable to bearer. Interest on them can be payable by coupons or otherwise.[5] The bearer is entitled to have his name placed on the list of members on surrendering the

App. Cas. 1004. See also *In re Barrow-in-Furness and Northern Counties Land and Investment Company*, 14 Ch. D. 400; *In re Stapleford Colliery Company, Barrow's Case*, 14 Ch. D. 432.

[1] *Great Australian Mining Co., Ex p. Appleyard*, 18 Ch. D. 587.

[2] *In re Ince Hall Rolling Mills Co.*, 23 Ch. D. 545 n.

[3] The Companies Act, 1867, s. 27.

[4] *Ibid.* s. 28.

[5] *Ibid.* s. 27.

warrant for cancellation.[1] A share-warrant is liable to a stamp duty equal to three times the amount chargeable on a deed transferring the share or shares.[2] No trusts can be recorded on the register,[3] and consequently trustees are liable as contributories. Notice of any increase in the capital of a company, or of any consolidation, or division, of its shares, or of conversion of its shares into stock, must be given to the registrar of joint stock companies.[4]

Charging orders.

A judgment creditor can obtain *Ex parte* an order charging any stock or shares standing to the credit of the judgment debtor with the amount of his debt. No proceedings can be taken to enforce the charge until six months from the date of the order.[5] Notice of the order operates as a distringas.[6]

Money due to a shareholder from a company in voluntary winding up, and in the hands of the liquidator, cannot be attached by a judgment creditor of the shareholder.[7]

Directors.

The management of the company is usually left to a board of directors; their authority is limited by the memorandum and articles of association, and they are the *particular* not *general* agents of the

[1] The Companies Act, 1867, s. 29.
[2] The Companies Act, 1862, s. 33.
[3] *Ibid.* s. 30.
[4] *Ibid.* ss. 28, 34.
[5] 1 & 2 Vict. c. 110, s. 14.
[6] *Ibid.* s. 15.
[7] *Mack* v. *Ward*, W. N. 1884, 16.

company.[1] All persons, third parties, as well as members of the company, are deemed to be acquainted with the instruments creating their authority, and any act of the directors exceeding their limited authority will be void unless it be capable of being, and be sanctioned by the company.

The articles of association usually give them full power to do all acts necessary to carry on the ordinary business of the company, and if the articles of association are silent upon the point the law would imply such authority. Their authority is construed liberally. In *Hampson* v. *Price Patent Candle Co.*,[2] the Master of the Rolls held that the directors of a company were at liberty to make a gratuity to the servants of the company when there had been a very good year, by giving each of them who was in their service and was of good character a gratuity equal to a week's wages.

The conduct of the directors can generally only be impugned at a general meeting, for they are the servants of the company, and not of the individual shareholders.[3] Where they are appointed for a limited time the company has no inherent power to remove them before its expiration.[4] As they themselves are agents, the rule *delegatus non potest dele-*

Delegation of powers by directors.

[1] Thring on Joint Stock Companies, 3rd ed. p. 112.

[2] 24 W. R. 754; see also *Hutton* v. *West Cork Ry. Co.*, 23 Ch. D. 654.

[3] Lindley on Partnerships, p. 544.

[4] *Imperial Hydropathic Co.*, 23 Ch. D. 1.

gare is *primâ facie* applicable to them, and their power of acting through agents and binding the company by the acts of their agents is governed entirely by the articles of association.

The directors cannot bind the company by acts *ultra vires*,[1] and such acts will only become binding on the company if it can be shown that each shareholder has individually acquiesced in them.[2]

The directors are not the agents of the company to commit a fraud, and the company will not be bound if the directors enter into a fraudulent and illegal agreement on its behalf.[3] But on the other hand, the company cannot take advantage of the fraud of its agent, and cannot, while repudiating a misrepresentation made by the agent, enforce a contract entered into through the misrepresentation.

The directors of the company fill a double capacity. They are: (1) Agents of the company; (2) Trustees for the shareholders of the powers committed to them. As agents they are governed by the ordinary laws of principal and agent. As trustees they must use the powers conferred upon them for the benefit of the shareholders.

For instance, in the case of the *Madrid Bank* v. *Pelly*,[4] the directors made a premature allotment of

[1] For explanation of *ultra vires* see chap. II.

[2] Buckley, 4th ed. pp. 443, 419, and 425, and cases there cited.

[3] *British and American Telegraph Co.* v. *Albion Bank*, L. R. 7 Ex. 119.

[4] 7 Eq. 442.

shares, and a premature payment of £5,000 to the promoters. The promoters then paid to four of the directors £500 each. There was no evidence that this was done under any agreement, and the directors said the money was given them as a mere matter of bounty. On the company being wound up they were ordered to refund the money. In *Porter* v. *McKenna*,[1] directors were held liable to refund profits made by them by issuing new shares to their nominees at a time when the shares were at a considerable premium.

In *The Joint Stock Discount Co.* v. *Bowen*,[2] directors were held jointly and severally liable to refund moneys they had lost in taking on behalf of the company shares in another company, which they (the directors) were interested in bringing out. In this case the taking shares in the new company was outside the scope of the original company, and, therefore, *ultra vires*.

In the *Carriage Co-operative Supply Association*,[3] the directors, who had issued fully paid-up shares to a promoter by way of promotion money, and then accepted from him a sufficient number of the shares to qualify them for the office of director, were held to be jointly and severally liable to the company for the par value of the total number of shares derived from the promoter.

The Court will not make directors personally

[1] 10 Ch. 96.
[2] 8 Eq. 381.
[3] 53 L. J. (Ch.) 1154.

liable for a mere error in judgment when they have acted *bonâ fide*, intending to do what is best for the company.[1] Nor if they keep within their powers will the Court restrain them from exercising a discretion vested in them, although their conduct may seem foolish unless it is alleged and proved that they are influenced by improper motives.[2]

It appears that directors will not be personally liable for acts *ultra vires* where they have made a honest mistake as to the extent of their powers.[3]

Unlimited liability of directors.

In general the liability of the directors is the same as ordinary members; it is, however, provided by the Companies Act, 1867,[4] that the liability of the directors of a limited company, may, if so provided by the memorandum of association, as originally prepared, or as altered by special resolution, be unlimited. But even in this case no contribution required from any such director, or manager, is to exceed the amount which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution, in order to satisfy the debts and liabilities of the company and the costs of winding-up;[5] the liability of a past director, in his character of director, ceases one year after he has given up the

[1] *Brighton Brewery Co.*, 37 L. J. Ch. 278.

[2] *Turquand* v. *Marshall*, 4 Ch. 376.

[3] *The London Financial Association* v. *Kelk*, 53 L. J. (Ch.) 1025.

[4] The Companies Act, 1867, ss. 4–8.

[5] *Ibid.* s. 5, subs. 4.

office, and he is not liable in his character of director, in respect of debts or liabilities contracted after the period of his holding office.[1] In addition to this they are personally liable (on the ordinary principles of agency): (1) when they exceed their authority; (2) for any misrepresentation of which they are guilty; and (3) to the company itself for any loss arising from unauthorised investments. In the same way a director signing a promissory note, with nothing in itself to exclude his personal liability, will be personally liable upon it. And, of course, he will also be personally liable if the articles give no power to the directors to accept bills, whether his acceptance is stated to be "on behalf of" the company or not.[2]

When they are personally liable.

Distringas.

Persons interested in stock or shares standing in the name of a trustee or another person may prevent any fraudulent transfer of the stock or shares. The method of doing so, which was formerly called a "distringas," is as follows:—

The person claiming to be interested in the stock or shares, or his solicitor, must make an affidavit stating that he is beneficially interested in the stock or shares described in a notice which is exhibited to the affidavit.[3] The affidavit is filed at the Central Office. An office copy of the affidavit

[1] The Companies Act, 1867, s. 5, subs. 2, 3.

[2] *West London Commercial Bank* v. *Kitson*, 13 Q. B. D. 360.

[3] For form of this affidavit and notice, see R. S. C. Appendix B. forms Nos. 22 & 27.

and a duplicate of the notice, authenticated by the seal of the Central Office must then be served upon the company.

A note must be appended to the affidavit stating the person on whose behalf it is filed, and to what address notices for that person are to be sent.

The company served with the notice will not transfer the stock or shares or (if the notice requires it not to do so) pay the dividends upon them without giving eight days' notice to the person who has filed the affidavit. The notice by the company to the person filing the affidavit may be sent by prepaid letter to the address named in the note to the affidavit.[1]

Contracts made by a company.

With regard to contracts made on behalf of companies, the Companies Act, 1867,[2] provides that companies may be able to contract, by their duly authorised agents, in exactly the same way as individuals, that is: (1) Where the contract is required by law to be in writing, under seal,[3] it must be in writing under the common seal of the company; (2) Where a contract is required by law to be in writing and signed by the parties to be charged therewith, it may be signed by the duly authorised

[1] R. S. C. Ord. XLVI.

[2] 30 & 31 Vict. c. 131, s. 37.

[3] Under the Companies Seal Act, 1864 (27 & 28 Vict. c. 19) a company formed under the Act of 1862 may have an official seal for use in foreign countries, and may employ a local agent to affix the same to any deed, contract, or other instrument to which the company is a party in such foreign country.

agent of the company; and (3) Where the contract would by law be valid, although by parol only, and not reduced into writing, it may be made by parol by anyone having the express or implied authority of the company to make it; and that the contract may in each case be varied or discharged in the same way as it may be made.

Power to sanction matters relating to the management of the company.

In all companies majorities of shareholders can authorise and sanction matters relating to the management and affairs of the company provided such matters do not affect its constitution, *i.e.*, are not *ultra vires*. A power to borrow may be given by special resolution.[1] But in the absence of an authority in the memorandum of association the issuing of preference shares is an alteration of the constitution of the company and *ultra vires*.[2] And when the articles give power to issue preference shares to a limited number the number cannot be increased by special resolution,[3] the principle being that in the absence of express provision it is an implied condition that the shareholders are entitled to rank equally in respect of dividend.

Resolutions.

The Act of 1862 provides for three sorts of majorities—a majority simply, which is what the name implies, a majority of creditors at a duly

[1] *Byron* v. *Metropolitan Saloon Omnibus Co.*, 3 De G. & J. 123; *Peninsular Co.* v. *Fleming*, 27 L. T. 93.

[2] *Hutton* v. *Scarborough Hotel Co.* (No. 1), 2 Dr. & Sm. 514; 4 D. J. & S. 672; 12 L. T. 228, 289; 13 W. R. 574, 631; *Moss* v. *Syers*, 11 W. R. 1046.

[3] *Mechado* v. *Hamilton*, 28 L. T. 578; 29 L. T. 364.

convened and constituted meeting; a special and an extraordinary resolution.

A special resolution may be briefly defined as a resolution passed by three-fourths of the members present at a general meeting, of which notice specifying the intention to propose such resolution has been duly given, and confirmed by a subsequent resolution, passed by a majority at a subsequent general meeting, of which notice has been duly given, held at an interval of not less than fourteen days[1] nor more than one month from the date of the first meeting.[2] A copy of every special resolution must be printed, published, and forwarded to the registrar of joint stock companies for registration;[3] and a copy of every special resolution for the time being in force must be annexed to or embodied in every copy of the articles of association issued after the passing of the resolution.[4] Special resolution. Definition.

An extraordinary resolution is a resolution passed by three-fourths of the members present at a general meeting, of which notice specifying the intention to propose such resolution has been duly given, but needs no confirmation.[5] In other words, an extraordinary resolution is the first step of a special resolution. Extraordinary resolution. Definition.

[1] This means 14 clear days exclusive of the respective days of meeting. *Railway Sleepers Supply Co.*, 29 Ch. D. 204.

[2] The Companies Act, 1862, s. 51.

[3] *Ibid.* s. 53.

[4] *Ibid.* s. 54.

[5] *Ibid.* s. 129.

Unless a poll is demanded by at least five members, the declaration of the chairman that any resolution has been carried is to be deemed conclusive evidence of the fact.

The chairman at a general meeting has *primâ facie* authority to decide all incidental questions arising at the meeting, and which require immediate decision, and his decision as entered in the minute book is *primâ facie* correct.[1]

Poll.

Where a poll is demanded, in computing the majority reference is to be had to the number of the votes to which each member is entitled by the regulations of the company.[2] Voting by proxy will be allowed unless expressly precluded by the articles of association. By the Stamp Act, 1870,[3] proxies for voting are liable to a stamp duty of one penny, and are only available at a specified meeting, or at an adjournment thereof.

Proxies.

A company cannot purchase its own shares unless the memorandum and articles contain in plain terms a direct authority enabling it to do so. In the absence of a clear and distinct power for that purpose, the purchase is *ultra vires*. It makes no difference that the company may be authorised to

[1] *Indian Zoedone Co.*, 53 L. J. (Ch.) 468.

[2] The Companies Act, 1862, s. 51. The usual voting power of members is one vote for every share up to ten, one for every additional five shares up to one hundred, and one for every additional ten shares beyond the first hundred. No member can vote unless all calls due from him have been paid.

[3] 33 & 34 Vict. c. 97, s. 102.

deal in shares of joint stock companies generally. If the power be not a power to traffic in the shares (which power, if legal at all, must be given by the memorandum), but a power to purchase shares for the benefit of the company (*e.g.*, to carry out an arrangement for getting rid of a discontented shareholder), then an authority contained in the articles is sufficient without finding it also expressly in the memorandum.[1]

[1] Buckley on Companies, 4th ed. p. 75.

CHAPTER IV.

THE WINDING-UP OF JOINT STOCK COMPANIES.

THE Chancery Division of the High Court of Justice has jurisdiction over the winding-up of all companies registered in England,[1] except companies engaged in working mines within and subject to the jurisdiction of the Stannaries, and these, if the Vice-Warden of the Stannaries certifies, that in his opinion, the company will be more advantageously wound up there, may, too, be wound up by the Chancery Division. But where the Court makes an order for winding up a company, it may, if it think fit, direct all subsequent proceedings for winding up the same, to be had in the Court of Bankruptcy, having jurisdiction in the place where the registered office of the company is situated,[2] or in the County Court.[3]

A judge of the Chancery Division who makes an order for the winding-up of a company has power

[1] A partnership, association, or company corporate or registered under the Companies Act, 1862, cannot be adjudged bankrupt. Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 5.

[2] The Companies Act, 1862, s. 81.

[3] The Companies Act, 1867, s. 41.

to order the transfer to himself of any cause or matter pending in any other Court or division brought or continued by or against the company.[1]

There is no jurisdiction under the Companies Act, 1862, to wind up a foreign company which has carried on business in England by means of agents, but which has no branch office of its own here.[2]

Three kinds of winding-up are provided by the Act:

1. Winding-up by the Court.
2. Voluntary winding-up.
3. Winding-up subject to the supervision of the Court.

The general scheme is the same in all these methods. The *modus operandi* of the Act is to change the directors for officers called "Liquidators," and to give the latter the fullest powers to convert the property of the company into money. This money is then distributed amongst the creditors of the company, and any balance is divided amongst its members. The great distinction between compulsory or winding-up by the Court, and voluntary winding-up, is, that in the first case, the liquidators are officers appointed by, and are agents of, the Court, and if the company is insolvent, are trustees only for the creditors; whereas, in the second class,

Distinction between compulsory and voluntary winding-up.

[1] R. S. C. 1883, Ord. XLIX. rule 5.

[2] *Lloyd Generale Italiano*, 29 Ch. D. 219.

they are trustees for the company, and the voluntary winding-up need not necessarily imply insolvency, as it is very frequently adopted as a scheme for dissolving the company, for the purpose of changing its objects, or constitution, or of amalgamation with some other company. In the case of a winding-up subject to the supervision of the Court, the liquidators are appointed by the company, but are subject to the control of the Court.

Winding-up subject to supervision.

It will be as well in the first place to mention the details of each kind of winding-up, and then to consider its general effects.

When a company may be wound up by the Court.

First, winding-up by the Court.

A company may be wound up by the Court:

1. Whenever the company has passed a special resolution requiring the company to be wound up by the Court:
2. Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year:[1]
3. Whenever its members are reduced in number to less than seven:[2]

[1] The winding-up in this case is not compulsory but discretionary with the Court. *In re Middlesborough Assembly Rooms Company*, 14 Ch. D. 104.

[2] If the number of members is reduced below seven and the company continues business for six months afterwards, each and every member who is cognizant of the fact is liable for the whole of the debt of the company. The Companies Act, 1862, s. 48.

4. Whenever the company is unable to pay its debts:
5. Whenever the Court is of opinion that it is just and equitable that the company should be wound up.[1]

When a company is to be deemed unable to pay its debts.

As the creditor is precluded from suing the individual members of the company, it was necessary to provide him with a summary method of compelling the company, either to pay his debt or be wound up; it is accordingly provided by a subsequent section, that a company shall be deemed unable to pay its debts:—

1. Whenever a creditor (by assignment or otherwise) to whom the company is indebted, at law or in equity, in a sum exceeding £50, has served on the company, by leaving the same at their registered office, a demand requiring payment of the sum due, and the company has for three weeks neglected to pay, secure, or compound for the same:

[1] The Companies Act, 1862, s. 79. An unregistered company may be wound up: (*a*) Whenever the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs; (*b*) Whenever the company is unable to pay its debts; (*c*) Whenever the court thinks that it is just or equitable that it should be wound up. The Companies Act, 1862, s. 199, ss. 3. As to the winding-up of unregistered companies, see secs. 199–204.

2. Whenever execution or other process, issued on a judgment, decree, or order obtained in any Court against the company, is returned unsatisfied in whole or in part:
3. Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.[1]

Petition.

Who may petition.

Any application for the winding-up of a company must be by petition, which may be presented: (1) By the company; (2) By one or more creditors; (3) By one or more contributories of the company, or by all or any of the above parties together or separately.[2]

In the case of a life assurance company, a petition may also be presented by a policy holder on the ground of the company's insolvency.[3]

Contributory.

In order, however, to prevent a person buying shares solely for the purpose of presenting a petition for winding-up, it is provided by the Companies Act, 1867,[4] that no contributory shall be capable of presenting a petition for winding-up a company (except in the event of the members being reduced to less than seven), unless the shares in respect of which he is a contributory, or some of them, either were originally allotted

[1] The Companies Act, 1862, s. 80. The cases in which an unregistered company will be held to be unable to pay its debts, are practically the same. See s. 199, sub-s. 4.

[2] The Companies Act, 1862, s. 82.

[3] 33 & 34 Vict. c. 61, s. 21.

[4] 30 & 31 Vict. c. 131, s. 40.

to him, or have been held[1] by him, and registered in his name, for a period of at least six months, during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder. But where a share has, during the whole or any part of the six months, been held by or registered in the name of a wife of a contributory, either before or after her marriage, or by or in the name of any trustee or trustees for such wife, or for the contributory, such share is deemed to have been held by and registered in the name of the contributory. A contributory, however, who has not paid a call made upon him, cannot present a winding-up petition.[2] It is not necessary (except where the creditor's right to a winding-up order arises from non-payment of his debt for three weeks after demand) that the petitioning creditor's debt should amount to £50, and the assignee of a debt can petition[3] as though he had been the original creditor. A holder of fully paid-up shares has also been held to be a con-

[1] The word "held" used in the section has no technical meaning and a contributory may present a petition although during a part of the six months the contributory's estate was vested in a trustee under a liquidation petition presented by the contributory. *Wala Wynaad Gold Mining Co.*, 21 Ch. D. 849.

[2] *Re The European Life Assurance Society*, L. R. 10 Eq. 403; *In re Steam Stoker Co.*, L. R. 19 Eq. 416; 44 L. J. R. Ch. 386; *In re Norwich Provident Insurance Society* v. *Hesketh*, 49 L. J. R. (N. S.) Ch. 187.

[3] *London & Birmingham Alkali Co.*, 1 D. F. & J. 257.

tributory for the purpose of presenting a petition.[1] Where a petitioner resides out of the jurisdiction he can be compelled to give security for costs.[2] A creditor who has presented a petition, does not become a trustee for the other creditors, and is not bound to bring the petition to a hearing, but if he proceeds with a petition after an offer has been made to satisfy his debt and costs, he will be liable for all costs incurred after such offer.[3]

Petitioner *dominus litis.*

In the Paris Rink Co.,[4] a creditor presented a petition. Before the petition was heard he sold his debt and the right to proceed with the petition to a shareholder. The shareholder obtained leave to amend by making himself a co-petitioner. V.-C. Hall decided that the sale of a right to proceed with a winding-up petition ought not to be allowed, and dismissed the petition.

Petition—what it must show.

The petition must be entitled, In the Matter of the Companies Acts, and of the company sought to be wound up.[5] It should contain in detail sufficient to enable the Court to see that a winding-up order should be made. And it should further show, if presented by a contributory, that section 40 of the Act of 1867 has not been violated.[6]

[1] *National Savings Bank Association*, L. R. 1 Ch. 574.

[2] *Home Assurance Co.*, L. R. 12 Eq. 112; *Ex p. Seidler*, 12 Sim. 106; *Royal Bank of Australia, Ex p. Latta*, 3 De G. & Sm. 186.

[3] Buckley on Joint Stock Companies, 4th ed. p. 200.

[4] 5 Ch. D. 959.

[5] Gen. Order, March, 1868, rule 1.

[6] *I.e.*, That the contributory has held his shares for six

The petition must be verified by affidavit,[1] and must be advertised seven clear days before the hearing, once in the London Gazette, and once at least in two London daily morning papers, in the case of a company whose registered office, or where it has no such office, then whose principal, or last known place of business is or was situate within ten miles from Lincoln's Inn Hall. In the case of any other company, it must be advertised once in the London Gazette, and once at least in two local papers circulating in the district where such registered office, or principal, or last known place of business, is or was situate. Advertising petition.

The advertisement must state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent. Unless presented by the company it must be served at the registered office (if any) of the company, and if no registered office, then at the principal or last known place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered What it must contain. Service of petitio

months out of the previous eighteen months, or that they have devolved upon him through the death of a former owner.

[1] Gen. Order, November, 1862, rule 4. Every contributory or creditor of the company is entitled to a copy of the petition on paying for it at the rate of 4*d.* per folio (rule 5).

office or principal place of business, or by being served on such member or members as the Court may direct; and every petition for the winding-up of a company, subject to the supervision of the Court, must be served on the liquidator under the voluntary winding-up.[1] All persons served with the petition, and also all contributories and creditors, but apparently no other persons, are entitled to appear on the petition and to support or oppose it.[2] If the application is successful the Court makes a winding-up order.

Winding-up orders may be appealed from. The appeal lies to the Court of Appeal. Where a limited company alone appeals from a winding-up order, without joining any one personally responsible for costs, it will generally be ordered to give security for costs.[3]

The Court usually gives the carriage of the order to the petitioner, and in the absence of any special reason to the contrary appoints his nominee liquidator. In the case of the *Hoyland and Silkstone Colliery Co.*,[4] however, Pearson, J., said that unless he was so directed by the Court of Appeal he should not act upon any supposed rule that the nominee of the petitioner was, as a matter of course, to be appointed liquidator.

[1] Gen. Order, November, 1862, rules 2, 3.

[2] Lindley on Partnership, 3rd. ed. p. 1298.

[3] *Photographic Artists' Co-operative Supply Association*, 23 Ch. D. 370.

[4] W. N. 1884, 13.

A petitioner who presents a second petition in ignorance of a first petition having been presented, is entitled to his costs up to the time when he has notice of the first petition. If he proceeds with the petition after such notice he will get no further costs unless he has good reason to suppose that the first petition is not presented *bonâ fide*, in which case he is justified in proceeding and may be allowed his costs.[1]

Where a winding-up order is made on two petitions, the judge has a discretion as to which of the petitioners shall have the carriage of the order.[2] The Court has jurisdiction to restrain by injunction a person claiming to be a creditor from presenting a petition; where there is a *bonâ fide* dispute about the debt and the company is solvent.[3] It appears where a winding-up petition is dismissed, the Court has no power to give the petitioner his costs of the petition.[4]

If after presentation of a winding-up petition, the petitioner becomes bankrupt, he must give security for the costs of the petition.[5]

Order for winding-up.

Any order for winding-up a company by the Court or subject to supervision, must be adver-

[1] *In re General Financial Bank*, 20 Ch. D. 276.

[2] *Re N. Cunningham & Co.*, 53 L. J. Ch. 246.

[3] *Cercle Resturant Castaglione Co.* v. *Lavery*, 18 Ch. D. 555; *Niger Merchants Co.* v. *Capper*, 18 Ch. D. 557n; *Gold Hill Mines*, 23 Ch. D. 210.

[4] *Tynside Permanent Benefit Building Society*, W. N. 1885, 148.

[5] *Carta Para Mining Co.*, 19 Ch. D. 457.

tised by the petitioner once in the London Gazette within twelve days after its date, and be served on such persons (if any) and in such manner as the Court directs.[1] A copy of the order must then be left in chambers within ten days after it has been passed and entered and a summons to proceed taken out upon it. In default of the order being duly carried in and proceeded on by the petitioner, any other person interested in the winding-up may take it, and the judge may give the carriage of the order to such person, if he think fit. On the return of the summons, a time is fixed for the appointment of an official liquidator, for proof of debts, and for the list of contributories to be brought in, and directions are given as to advertisements.[2] The official liquidator is then appointed by the order of the judge.[3] This may be with or without previous advertisement.[4]

Summons to proceed.

Appointment of liquidator

The official liquidator gives security by recognizance with two or more sureties in such sum as the judge approves of. The security of a guarantee society may be accepted by the judge.[5] His appointment must be advertised immediately after he has been appointed and given security.[6] All money, bills, notes, and other securities for money received by the official liquidator, must be paid into

[1] Gen. Order, November, 1862, rule 5.
[2] *Ibid.* rule 7.
[3] *Ibid.* rule 8.
[4] *Ibid.* rule 9.
[5] *Ibid.* rule 10.
[6] *Ibid.* rule 14.

the Bank of England.[1] On each occasion of passing his accounts, the official liquidator must satisfy the judge that his sureties are living, resident in Great Britain, and solvent.[2]

Costs of petition.

The petitioner's costs are a first charge on the estate, and must be paid in full in priority to all other claims. If the petitioner is a shareholder, and subsequently becomes liable as a contributory in respect of calls in the winding-up, he is entitled to his costs without any set-off from the company for monies due from him in respect of such calls, as the costs are in fact due to his solicitor.[3] Where several petitions are presented under circumstances which justify their presentation, the practice is to make one order on all the petitions, so that each petitioner may obtain his costs.[4]

Costs of persons appearing on the petition.

With respect to the costs of persons who appear to support or oppose a petition although not served with it, there appears to be no settled rule. But in the absence of special circumstances the rule appears to be: (1) To allow one set of costs to those contributories, and one set to those creditors who (without being served) appear on the petition

[1] Gen. Order, November, 1862, rules 11, 36, 37 & 38. The official liquidator is liable to a penalty of 10 per cent. on every sum of £100, and a proportionate amount for any larger amount retained in his hands for more than seven days from its receipt. A fresh penalty of the same amount accrues every seven days. *Ibid.* rule 36.

[2] *Ibid.* rule 13.

[3] Buckley, 4th ed. p. 222.

[4] *Ibid.* p. 225.

and support the view which ultimately prevails, *i.e.*, support a successful or oppose an unsuccessful petition; (2) To give no costs to those who (not being served) support an unsuccessful or oppose a successful petition; but (3) To make a petitioner pay the costs of persons who appear to answer and succeed in refuting unfounded charges made against them.[1]

Where a winding-up petition is dismissed on the application of the petitioner, shareholders and creditors appearing either to oppose or support the petition are entitled to their costs.[2]

Petitions presented by a creditor,

In petitions presented by a creditor, as the creditor cannot obtain payment of his debt, the Court, is bound *ex debito justitiæ*, to make a winding-up order,[3] but it is only *ex debito justitiæ* that a creditor obtains his order when there is some chance of his getting paid by means of it. If there are no assets that a winding-up order can reach (as if all the assets are fully charged in favour of debenture holders and other creditors oppose), an immediate order may be refused.[4]

It is only as between the company and the credi-

[1] Lindley on Partnership, 3rd ed. p. 1299. See Gen. Order, November, 1862, rules 60–62.

[2] *Nacupai Gold Mining Co.*, 28 Ch. D. 732, overruling *Jablochkoff Electric Light and Power Co.*, W. N. 1883, 189.

[3] *Per* Lord Cranworth in *Bones* v. *The Hope, &c., Society*, 11 H. L. C. 389.

[4] *St. Thomas' Dock Co.*, 2 Ch. D. 116; *Uruguay Central and Hygueritas Ry. Co. of Monte Video*, 11 Ch. D. 372; *In re Chapel House Colliery Co.*, 24 Ch. D. 259.

tor that the latter if he cannot obtain payment of his debt is entitled to a winding-up order,[1] and if the bulk of the creditors prefer to continue a voluntary winding-up, the Court will give weight to their wishes and will, instead of making a winding-up order, make an order to continue the voluntary winding-up under supervision,[2] or if there is no voluntary winding-up the Court may refuse to make any order if the majority of the creditors so desire.[3]

A winding-up order may be discharged on payment of the petitioner's debt if no other creditor appears.[4]

In petitions presented by a contributory, however, the Court is bound to exercise a discretion.[5] or contributory.

A petition for winding up a joint stock company is a *lis penens*, and will bind the property of the company if duly registered.[6] Petition a *lis pendens*.

Any appeal from an order or decision made in the winding-up of a company, must be brought within twenty-one days.[7] Appeals.

An official liquidator is an officer appointed by the Court to realise and distribute the assets of the company. He may be appointed provisionally.[8] Official liquidators.

[1] *London Suburban Bank*, 6 Ch. 641.

[2] *West Hartlepool Co.*, 10 Ch. 618.

[3] *Langley Mill Co.*, 12 Eq. 26.

[4] *Aston Hall Colliery Co.*, 45 L. T. 677.

[5] *Planet Benefit Society*, L. R. 14 Eq. 441, 450.

[6] 25 & 26 Vict. c. 89, s. 114.

[7] R. S. C. 1883, Ord. LVIII. rule 9.

[8] Gen. Order, November, 1862, rule 15.

The Court may appoint one person alone to be official liquidator, or several persons to be together official liquidators, and may also determine what security, if any, is to be given by any official liquidator on his appointment.[1] The present practice is to appoint the official liquidator in chambers, and it is now the settled practice not to appoint the official liquidator on the hearing of the petition but to direct a reference to chambers for that purpose.[2] He may resign, or be removed by the Court, on due cause shown, and any vacancy in the office of an official liquidator may be filled up by the Court.[3] He has power, with the sanction of the Court,—

Powers of official liquidator.

1. To bring and defend actions:
2. To carry on the business of the company so far as may be necessary for the beneficial winding-up:[4]
3. To sell the property of the company:
4. To execute, in the name of the company, all deeds, receipts, and other documents, and for that purpose to use the company's seal:
5. To prove and take dividends in the matter of a bankruptcy or sequestration of a contributory:

[1] The Companies Act, 1862, s. 92.

[2] *General Financial Bank*, 20 Ch. D. 276.

[3] The Companies Act, 1862, s. 93.

[4] The Court has no power in a winding-up to sanction a contract by the liquidator, unless it can be shown that its object is the beneficial winding-up of the company. *In re Wreck Recovery and Salvage Co.*, 15 Ch. D. 353.

6. To draw, accept, and endorse any bill of exchange or promissory note in the name and on behalf of the company; also to raise upon the security of the assets of the company any requisite sum or sums of money:
7. To take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any sum due from a contributory or from his estate, and which cannot be conveniently done in the name of the company:
8. To do and execute all such other acts and things as may be necessary for winding up the affairs of the company and distributing its assets.[1]

The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court.[2] The official liquidator may, with the sanction of the Court, appoint a solicitor.[3] But as between the official liquidator and his solicitor the official liquidator is not personally liable for the costs of the winding-up.[4] The solicitor's costs are

[1] The Companies Act, 1862, s. 95.
[2] *Ibid.* s. 96.
[3] *Ibid.* s. 97.
[4] *Anglo-Moravian Co., Ex p. Watkin*, 1 Ch. D. 130. Nor is a liquidator in a voluntary winding-up. *Trueman's Estate*,

regulated by a schedule of fees under the General Orders of 1862.[1] In practice it is the invariable rule that a liquidator, who is a solicitor, shall not employ his partner, as his solicitor in the winding up, unless he be willing to act without remuneration.[2]

Advertisements for creditors.

Advertisements are issued for the creditors to send in particulars of their claims.[3] Any claim may be allowed or the official liquidator may require the creditor to prove it.[4] The creditor is allowed the cost of proving his debt where successful.[5] The liquidator is entitled to deliver interrogatories to a person claiming to prove who has made an affidavit of documents.[6]

Settling list of contributories.

The next duty of the official liquidator is to prepare the list of those persons who are liable to contribute to the assets as the present members, or more technically speaking, to complete the "A" list of contributories; he then obtains an appointment for the list to be settled by the Judge in chambers, and gives four days' notice in writing of

Hooker v. *Piper*, L. R. 14 Eq. 278; and see *In re Massey*, L. R. 9 Eq. 367.

[1] Gen. Order, November, 1862, rule 70, sched. 1. See Appendix.

[2] *Universal Private Telegraph Co.*, 19 W. R. 297.

[3] Gen. Order, November, 1862, rule 20. All advertisements, when not otherwise directed by the rules, are to be inserted once in the *London Gazette* and in such other newspapers and for such numbers of times as may be directed. *Ibid.* rule 53.

[4] *Ibid.* rules 23 & 24.

[5] *Ibid.* rule 27.

[6] *In re Alexandra Palace Co.*, 16 Ch. D. 58.

such appointment to every person included in the list, and in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing must be given to every person to whom such variation or addition applies;[1] the list of past members or "B" contributories, is settled when the "A" list is exhausted, in the same way. All contributories and creditors are entitled at their own costs to attend the proceedings in the winding-up.[2]

Remuneration of the official liquidator.

The remuneration of the official liquidator is by way of percentage or otherwise as the Court directs,[3] and is paid out of the assets next after the costs of the winding-up.[4]

An official liquidator though in some sense a trustee, is a paid agent bound to discharge his duties with reasonable care and skill, and may be deprived of costs for a mistake which would not disentitle an ordinary gratuitous trustee.[5]

Official liquidators' accounts are to be passed and verified in the same manner as receiver's accounts.[6]

An official liquidator being an officer of the Court is not in the position of an ordinary litigant, and will not under ordinary circumstances be required to make an affidavit as to documents in his possession.

[1] Gen. Order, November, 1862, rules 29, 30.

[2] *Ibid.* rules 60–62.

[3] The Companies Act, 1862, s. 93.

[4] Buckley, 4th ed. p. 264.

[5] *Silver Valley Mines*, 21 Ch. D. 381.

[6] See Ord. LI. rule 23, of the R. S. C. 1883.

He is bound to produce to the adverse litigant the documents which the latter requires to have produced.[1]

Certificate that company is wound up.

The solicitor's claim for costs takes priority over that of the official liquidator.[2] On the termination of the proceedings in Chambers, a balance sheet of his receipts and payments is brought in by the official liquidator. On payment of the balance found due from him on passing his final account, his recognisance is vacated.[3] A certificate is then given by the Chief Clerk that the affairs of the company have been completely wound up, and unless the company has already been dissolved an order is made dissolving it.[4]

Where the assets of a company in compulsory liquidation are insufficient for payment of the costs of the winding-up the official liquidator is not entitled to any remuneration. If the assets are insufficient to pay the costs in full the order in which they are applied is to first pay the costs of realisation and then the remaining assets are applied rateably in paying any costs which the Court has ordered the liquidator to pay out of the assets and the general costs of the liquidation.[5]

A professional official liquidator (*e.g.* an ac-

[1] *Mutual Society*, 22 Ch. D. 714.

[2] *Re Massey*, L. R. 9 Eq. 673.

[3] Gen. Order, November, 1862, rule 65.

[4] *Ibid.* rule 66.

[5] *Dronfield Silkstone Co.*, 23 Ch. D. 511.

countant) against whom no personal unfitness is shown or suggested will not be removed for the purpose of appointing a lay liquidator (without special experience) in his place, even although the latter agrees to act without remuneration.[1]

Secondly, voluntary winding-up.

When a company may be wound up voluntarily.

A company may be wound up voluntarily:

1. Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association, that the company is to be dissolved, and the company in general meeting has passed a *resolution* requiring the company to be wound up voluntarily:
2. Whenever the company has passed a *special* resolution requiring the company to be wound up voluntarily:
3. Whenever the company has passed an *extraordinary* resolution to the effect that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, or that it is advisable to wind up the same.[2]

Notice of any special or extraordinary resolution

[1] *Civil Service and General Stores*, W. N. 1884, 158.

[2] The Companies Act, 1862, s. 129.

passed for winding-up a company voluntarily, must be given by advertisement in the London Gazette.[1]

It appears that a liquidator may be appointed at the same meeting as the voluntary winding-up is resolved upon, and this although the notice calling the meeting says nothing about the appointment, for the appointment of a liquidator is only a necessary consequence of a winding-up.[2]

The following consequences ensue upon the voluntary winding-up of a company:

Consequences of voluntary winding-up.

1. The property of the company is applied in satisfaction of its liabilities *pari passu*, and subject thereto, is (unless it be otherwise provided by the regulations of the company) distributed amongst the members according to their rights and interests in the company:
2. Liquidators are appointed and their remuneration fixed by the company in general meeting:
3. Where one person only is appointed, all the provisions in reference to several liquidators apply to him:
4. Upon the appointment of the liquidators, all the powers of the directors cease,

[1] The Companies Act, 1862, s. 132.

[2] *Indian Zoedone Co.*, 26 Ch. D. 70.

except so far as the company in general meeting, or the liquidators, sanction the continuance of such powers:

5. When several liquidators are appointed, every power given by the Act may be exercised by such one or more of them as may be determined at their appointment, or in default of such determination, by any number not less than two:

6. The liquidators may, without the sanction of the Court, exercise all powers by the Act given to the official liquidator:[1]

7. The liquidators exercise the powers given to the Court of settling the list of contributories, and any list so settled is *primâ facie* evidence of the liability of the persons named therein to be contributories:

8. The liquidators may call on all or any of the contributories to the extent of their liability, to pay all or any sum they deem necessary to satisfy the debts and liabilities of the company, and the costs of winding it up, and the liquidators may take into consideration the probability that some of the contribu-

[1] See *ante*, p. 76.

tories may partly or wholly fail to pay their respective portions of the same:

9. The liquidators must pay the debts of the company and adjust the rights of the contributories amongst themselves.[1]

Power of appointing liquidators may be delegated to the creditors.

A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may by an extraordinary resolution, delegate to its creditors the power of appointing liquidators and supplying vacancies in their number, or by a like resolution enter into any arrangement with respect to the powers to be exercised by its liquidators.[2]

Questions arising in the winding-up may be referred to the Court.

The liquidators, or any contributory of the company, may apply to the Court to determine any question arising in the winding-up, or to exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court; and the Court may, if satisfied that the determination of such question, or the required exercise of powers, will be just and beneficial, accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit.[3]

General meetings.

The liquidators may also from time to time summon general meetings of the company, for the

[1] The Companies Act, 1862, s. 133.

[2] *Ibid.* s. 135.

[3] *Ibid.* s. 138. The application must be by petition or motion unless judge directs it to be by summons. Gen. Order, November, 1862, rule 51.

purpose of obtaining the sanction of the company, by special or extraordinary resolution, or for any other purpose they think fit; and in the event of the winding-up continuing more than one year, they must summon a general meeting at the end of the first and each succeeding year, and must lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.[1]

Vacancies in office of liquidator how filled.

Any vacancies in the office of liquidators by death, resignation, or otherwise, may be filled up by the company, in general meeting, subject to any arrangement they have entered into with their creditors.[2] If from any cause there is no liquidator, the Court may, on the application of a contributory, appoint a liquidator. A liquidator in a voluntary winding-up can only be removed by the Court.[3]

Accounts of liquidator.

As soon as the affairs of the company are fully wound up, the liquidators must prepare an account showing how the liquidation has been conducted, and the property of the company disposed of; their next step is to call a general meeting for the purpose of considering the account; the meeting must be called by advertisement, specifying the time, place, and object of the

[1] The Companies Act, 1862, s. 139.

[2] *Ibid.* s. 140.

[3] *Ibid.* s. 141. The application must be by petition or motion unless judge directs it to be by summons. Gen. Order, November, 1862, rule 51.

meeting, and must be published for one month at least—previously to the meeting—in the London Gazette.[1] The liquidators must make a return to the registrar of such meeting having been held, and of the date at which the same was held, and at the expiration of three months from the date of the registration of such return the company is deemed to be dissolved.[2] The costs incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, are paid out of the assets of the company in priority to all other claims.[3]

Dissolution of company.

Cost of winding-up.

Members of a company may transfer their shares at any time before a resolution for voluntary liquidation has been passed, notwithstanding they know that such a resolution is about to be passed.[4]

Where a company is in the course of being wound up voluntarily, and the Court thinks fit to make an order directing the company to be wound up by the Court, the Court may provide for the adoption of all or any of the proceedings in the voluntary winding-up.[5]

Winding-up subject to the supervision of the Court.

Thirdly, winding-up subject to the supervision of the Court. This takes place where a company, in the course of voluntary winding-up, has proceedings taken against it for its winding-up by the

[1] The Companies Act, 1862, s. 142.

[2] *Ibid.* s. 143.

[3] *Ibid.* s. 144.

[4] *Taurine Co.*, 25 Ch. D. 118.

[5] The Companies Act, 1862, s. 146.

Court; in such a case, the Court may make an order directing that the voluntary winding-up shall continue, but subject to its supervision, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and conditions as the Court thinks just.[1] A petition, praying that a voluntary winding-up may continue subject to the supervision of the Court, is, for the purpose of giving the Court jurisdiction over suits and actions, to be deemed a petition for the winding-up of the company by the Court.[2] The Court may, in all matters relating to the winding-up under supervision, have regard to the wishes of the creditors or contributories, and may direct general meetings of them to be summoned, for the purpose of ascertaining their wishes.[3] An order for winding-up subject to the supervision of the Court usually continues the voluntary liquidators as official liquidators; but the Court may appoint any liquidator or liquidators (in addition to those appointed in the voluntary winding-up), and any liquidators so appointed have the same powers, and are subject to the same obligations, and in all respects stand in the same position, as the liquidators appointed by the company.[4] The liquidators

[1] The Companies Act, 1862, s. 147.

[2] *Ibid.* s. 148.

[3] *Ibid.* s. 149. Such meeting is summoned by a seven days' notice in writing from the liquidator. Gen. Order, November, 1862, rule 47.

[4] The Companies Act, 1862, s. 150.

appointed in a winding-up subject to supervision, may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company was being wound up altogether voluntarily.[1] But except as before mentioned, an order for winding-up a company under the supervision of the Court, is for all purposes to be deemed an order of the Court for winding-up the company by the Court.[2]

As to the general effects of winding-up.

Commencement of winding-up.

The winding-up of a company by the Court commences at the time of the presentation of the petition.[3] A voluntary winding-up commences from the time of the passing of the resolution authorising the winding-up;[4] when, however, the resolution is a special resolution, *i.e.*, a preliminary, followed by a confirmatory resolution, the commencement of the winding-up dates from the passing of the confirmatory resolution.[5] Where a voluntary winding-up is continued under supervision, the winding-up commences at the date of the resolution, and not at the date of the presentation of the petition, for this order is to continue the winding-up, which has already commenced.[6] The effect of the winding-up

[1] The Companies Act, 1862, s. 151.
[2] *Ibid.*
[3] *Ibid.* s. 84.
[4] *Ibid.* s. 130.
[5] Buckley, 4th ed. p. 285.
[6] *Ibid.*

is to put an end to the existence of the company, except for the purpose of the beneficial winding-up of the company. Consequently, in a voluntary winding-up, all transfers of shares, except transfers made by or with the sanction of the liquidators, or alteration in the status of the members of the company, taking place after the commencement of such winding-up, are void;[1] where the company is wound up by the Court or subject to its supervision, all dispositions of the property, effects, and things in action of the company, and every transfer of shares or alteration in the status of the members of the company, made between the commencement of the winding-up and the winding-up order, are void unless the Court otherwise orders.[2]

Transfers of shares after commencement of winding-up.

The Court may, at any time after the presentation of the petition, and before an order for winding-up a company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceedings, against the company upon such terms as it thinks fit.[3] After an order for winding-up has been made, no suit, action, or proceeding may be proceeded with or commenced against the company, except with the leave of the

Restraining proceedings after petition.

[1] The Companies Act, 1862, s. 131. A contract for the sale of shares in a company being wound up is valid as a contract, although made during the winding-up. Lindley on Partnership, p. 734, and see cases in notes.

[2] The Companies Act, 1862, s. 153.

[3] *Ibid.* s. 85.

Court,[1] and any attachment, sequestration, distress, or execution put in force against the estate or effects of the company (without such leave) after the commencement of the winding-up is void.[2]

Applications to stay proceedings when made.

Any application to stay proceedings in an action in the Common Law Division against the company, must be made in the Common Law Division in which the action is attached, and not in the Chancery Division.[3]

Leave to commence an action against a company in liquidation cannot be obtained *ex parte*.[4]

Landlord's right of distress.

A landlord is not, in respect of his right of distress, a secured creditor, and has not in the winding-up of a company the same right of distress as in bankruptcy.[5] Section 87 of the Bankruptcy Act, 1869, was held not to apply to executions against a company, and the Bankruptcy Act of 1883, has made no difference in this respect;[6] and the sheriff in executions against a company is not bound to hold the proceeds of the execution for 14 days before paying them over to the execution creditor.[7]

[1] The Companies Act, 1862, s. 87.

[2] *Ibid.* s. 163.

[3] *In re Artistic Colour Printing Co.*, 14 Ch. D. 502.

[4] *Western and Brazil Telegraph Co.* v. *Bibby*, 42 L. T. 821.

[5] *In re Coal Consumers' Association*, L. R. 4 Ch. D. 625.

[6] See 46 & 47 Vict. c. 52, s. 46.

[7] *In re Withernsea Brickworks*, 16 Ch. D. 337, overruling *In re Printing and Numerical Registering Co.*, 8 Ch. D. 535.

The powers of restraining proceedings apply to a company being wound up under the supervision of the Court,[1] and as the Court may, in a voluntary winding-up on the application of the liquidators or a contributory, exercise all or any of the powers which it may exercise if the company is being wound up by the Court,[2] it has, upon such application, power to restrain any proceedings after the commencement of the winding-up, but such proceedings are not *ipso facto* void, as in the case of a winding-up by or under the supervision of the Court.

In a voluntary winding-up.

It is a question for the discretion of the Court whether it will allow a creditor to proceed or not, and where a creditor of the company obtains judgment and issues execution *bonâ fide*, and the sheriff is actually in possession before the presentation of the petition, the creditor will not, except under special circumstances, be restrained from realizing his judgment.[3]

Discretionary with the Court to allow an execution creditor to proceed with his judgment or not.

The liquidators are empowered, with the sanction of the Court, where the company is being wound up by the Court or subject to its supervision, and with the sanction of an extraordinary resolution of the company where it is being voluntarily wound up, to compromise all calls, debts, and claims due to the company from any contributory or debtor, and to give valid discharges for the same.[4]

Compromising calls and debts.

[1] The Companies Act, 1862, ss. 148, 151.

[2] *Ibid.* s. 138.

[3] Buckley, 4th ed. p. 208.

[4] The Companies Act, 1862, s. 160.

Application to the judge to sanction a composition.

Any application to a judge to sanction a compromise with a contributory or debtor of the company must be supported by an affidavit of the official liquidator, that he has investigated the affairs of such contributory or debtor, and state his belief that the compromise will be beneficial to the company, and his reasons for so thinking.[1] The sanction is obtained by summons.[2]

Arrangements by a company with its creditors.

The Companies Act, 1862, contains powers for companies being wound up to make arrangements or compositions with their creditors, but as a more easy and effectual means has been provided by the Joint Stock Companies Arrangement Act, 1870, it will only be necessary to refer to the provisions of this last Act, which empowers the Court, where any compromise or arrangement is proposed between a company in the course of being wound up and its creditors or any class of its creditors (in whatever way the company is being wound up), on the application of any creditor or the liquidator, to order that a meeting of such creditors be summoned, in such manner as the Court directs, and if a majority in number representing three-fourths in value of the creditors present either in person or by proxy at such meeting, agree to any arrangement or compromise, such arrangement or compromise, if sanctioned by an order of the Court, is binding on all such creditors or class of creditors,

[1] Gen. Order, November, 1862, rule 49.

[2] *Ibid.* rule 50.

and also on the liquidators and contributories of the company.[1]

Liquidators may accept shares, &c., as a consideration for the sale of the company.

One of the most important powers of the liquidators under a voluntary winding-up, or a winding-up under the supervision of the Court, is that of selling the business and goodwill of the company being wound up to another company, in consideration of shares, policies, or other like interests. This power can only be exercised with the sanction of a special resolution of the company being wound up, but if done with such sanction is binding on the minority. Any dissentient member may, however, by notice in writing addressed to the liquidators, and left at the registered office of the company not later than seven days after the passing of the resolution, require the liquidators, at their option, either to abstain from carrying the resolution into effect, or to purchase his interest.[2]

Dissentient shareholder cannot be compelled to take shares.

The price to be paid for the interest of the dissentient member may be determined by agreement, or, if no agreement can be come to, by arbitration.[3] In a recent case,[4] a winding-up for the purpose of reconstruction, the company had offered the dissentient members 5*s.* in the £ for their shares. One of the dissentient members gave notice to arbitrate, and then applied to the Court for leave to examine the books, in order to see

[1] 33 & 34 Vict. c. 104, s. 2.

[2] The Companies Act, 1862, s. 161.

[3] *Ibid.* s. 162.

[4] *Glamorganshire Banking Co.*, 28 Ch. D. 620.

whether it would be better to accept the offer of 5*s*., or go on with the arbitration. V.-C. Bacon refused the application.

Novation.

Where the business of one company has been taken over by another, a question frequently arises as to the novation of contracts, or, in other words, how far the creditors have agreed to accept the security of the new company for payment of their debts, and to release the old one. A contract, in order to constitute such a release, need not be in writing, but must be tripartite, the creditor, the original debtor, and the new debtor must all be parties to it, and in such case it is a question of fact whether such agreement has been entered into or not.[1]

What will amount to a novation in the case of a life assurance company.

The Life Assurance Companies Act, 1872, s. 7,[2] provides that where a company has transferred its interest, or been amalgamated with another company, the mere fact that a policy holder has paid

[1] Buckley on Joint Stock Companies, 4th ed. p. 331. The term novation is one introduced from the Roman law. "Novation is the dissolution of one obligation by the formation of another." Any contract, civil or natural, could be extinguished by a new contract, operating either civilly or naturally, being formed. The new contract must be different from the old, and (1), the terms might be altered; or (2), a new debtor introduced. The new debtor might be substituted even without the consent of the old debtor; this new debtor was called *expromissor*, in the strict sense of that word. If the old debtor substituted another person as the new debtor in his own place, this was termed *delegatio*. A new creditor might also be introduced. (Sandar's Justinian, 5th ed. p. 563.)

[2] 35 & 36 Vict. c. 41.

premiums to the new company, shall not be deemed to be an abandonment of his rights against the old one. To do this, the abandonment of the old company and acceptance of the liability of the new must be signified by writing, signed by the policy holder or by his lawfully authorised agent.

Mode of enforcing calls.

Where the company is being wound up by the Court, or under its supervision, there is no necessity for the liquidators to bring an action for the payment of any money due from a contributory, as the Court has power to make an order directing payment to be made by him,[1] and such order has the same effect, and can be enforced in the same way, as any other order of the Chancery Division. Such calls are made by summons served four clear days before the day appointed for making the call on every contributory proposed to be included in such call, or by direction of the judge notice of the intended call may be given by advertisement. After this a copy of the order, with notice of the amount due, is sent to each contributory, and in default of payment he is served with a balance order requiring payment in the usual way.[2]

How calls are made.

An order for payment will not be made against a bankrupt contributory, and payment in such case can only be enforced by the Court of Bankruptcy.[3]

[1] The Companies Act, 1862, s. 100; and Gen. Order, November, 1862, Form 13.

[2] General Order, November, 1862, 33, 35.

[3] *Mitchell's Case*, L. R. 5 Ch. 400.

In a voluntary winding-up.

In a voluntary winding-up, however, the liquidator's only remedy for the non-payment of calls is by action.[1] The Court has, however, in every case power to arrest a contributory about to abscond.[2]

Arrest of absconding contributory.

Debts proveable.

All debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to proof against the company.[3]

Liquidator may deliver interrogatories.

The liquidator in a winding-up is entitled to deliver interrogatories to a person claiming to prove in the same way as in an action.[4]

Secured creditor.

The rule as to a secured creditor formerly was that he was entitled to prove for the whole amount due to him at the time of sending in his claim, and not merely, as in bankruptcy, for the balance remaining due after realizing or valuing his security.[5] But this rule has been altered by the Judicature Act, 1875,[6] which provides that in the winding-up of a company the same rules shall be observed, as to the rights of secured and unsecured creditors, as may be in force, for the time being under the law of bankruptcy, with respect to the estates of persons adjudicated bankrupt.

This section has been the subject of many conflict-

[1] The Companies Act, 1862, s. 151.

[2] *Ibid.* s. 118.

[3] *Ibid.* s. 158.

[4] *In re Alexandra Palace Co.*, 16 Ch. D. 58.

[5] Buckley on Joint Stock Companies, 4th ed. p. 325.

[6] 38 & 39 Vict. c. 77, s. 10.

ing decisions, and the question who are or are not secured creditors can hardly be considered to be settled. The Master of the Rolls in *In re Albion Steel Wire Company*[1] and V.-C. Malins in *In re Association of Land Financiers*[2] held that the bankruptcy rule,[3] that servants' wages are entitled to be paid in priority to all other debts, is by sec. 10 of the Judicature Act, 1875, extended to the winding-up of companies. These cases, however, appear inconsistent with the decision of the Court of Appeal in *In re Withernsea Brickworks*,[4] in which it was held by the Court of Appeal, overruling *In re Printing and Numerical Registering Company*,[5] that sec. 87 of the Bankruptcy Act, 1864, which deprives execution creditors of the fruits of an

[1] 7 Ch. D. 547.

[2] 16 Ch. D. 373.

[3] 32 & 33 Vict. c. 71, s. 32, ss. 2, provides that the debts thereinafter mentioned shall be paid in priority to all other debts: 1. All rates, taxes, &c. 2. All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of adjudication, not exceeding four months' wages or salary, and not exceeding £50; all wages of any labourer or workman in the employment of the bankrupt at the date of the order of adjudication, and not exceeding two months' wages. In the Stannaries the wages of miners, and other labourers employed in a mine within the jurisdiction of the Stannaries, not exceeding three months' wages, are paid in full in priority to all other debts. The Stannaries Act, 1862 (32 & 33 Vict. c. 19), s. 26.

[4] 16 Ch. D. 337.

[5] 8 Ch. D. 535; see also *Norton Iron Co.*, 26 W. R. 53; *Coal Consumers' Association*, 4 Ch. D. 625; *In re Albion Steel and Wire Work Co.*, 7 Ch. D. 546; *In re Richards and Co.*, 11 Ch. D. 676.

execution where the Sheriff has notice of an act of bankruptcy within 14 days after sale, is not made applicable to the winding-up of companies.

The question of servants' wages is now set at rest by the Companies Act, 1883.[1] The Act, by sec. 4, provides that in all cases of companies being wound up under the Companies Acts, 1862 and 1867, the following wages are to be paid in priority to all other debts :—

(*a*) All wages or salary of any clerk or servant in respect of service rendered to the company during 4 months before the commencement of the winding-up not exceeding £50, and

(*b*) All wages of any labourer or workman in respect of services rendered to the company during 2 months before the commencement of the winding-up.

The above mentioned wages rank equally among themselves, and are paid in full unless the assets of the company are insufficient to meet them, in which case they abate in equal proportions between themselves.[2]

The liquidator (subject to providing for the costs of the administration of the estate) is to pay these wages forthwith if he has assets, and if the assets in his hands are insufficient to do this, then as soon as assets come into his hands.[3]

[1] 46 & 47 Vict. c. 28. [2] S. 5. [3] S. 6.

In a case decided since the Act[1] it was decided that the provisions of sec. 4 of the Act applied to a winding-up commenced before the Act came into operation, and that the servant was entitled to payment of the wages specified by the Act, but the payment was not to disturb the past dividends.

Official liquidator a trustee for all the creditors.

It appears from recent decisions that a winding-up order constitutes the official liquidator a trustee for the creditors so as to prevent the Statute of Limitations from barring their debts.[2] The assignee of any chose in action belonging to the company, may bring or defend any action or suit relating to such chose in action in his own name.[3]

Fraudulent preference.

Any act relating to property which would, if done by or against any individual trader, be deemed, in the event of his bankruptcy, to have been done by way of undue or fraudulent preference of the creditors of such trader is, if made or done by or against any company, deemed, in the event of the company being wound up, to be done by way of undue or fraudulent preference of the creditors of the company, and is invalid accordingly; and for this purpose, the presentation of the petition, in the case of a company being wound up by or subject to the supervision of the Court, and a resolution for

[1] *Anglo-French Co-operative Society, Limited*, 50 L. T. R. 754.

[2] Buckley on Joint Stock Companies, 4th ed. p. 241.

[3] The Companies Act, 1862, s. 157.

winding-up the company in the case of a voluntary winding-up, are deemed to correspond with the act of bankruptcy in the case of an individual trader; and any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of all its creditors is void to all intents.[1] The Court can compel any past or present director, liquidator, or officer of a company who has been guilty of any misfeasance or breach of trust (notwithstanding that the offence is one for which the offender is criminally responsible), to repay any monies misapplied or retained by him, together with interest, or to contribute such sums to the assets of the company as the Court thinks fit;[2] and any such person may, by direction of the Court, be prosecuted for any offence of which he has been guilty, and the costs of the prosecution paid out of the assets of the company.[3] In addition to this, any director, officer, or contributory who destroys, mutilates, alters, or falsifies, or makes or is privy to any false or fraudulent entry, in any register or other document, with intent to defraud or deceive any person, is guilty of a misdemeanor, and is liable upon conviction to imprisonment for any term not exceeding two years with or without hard labour.[4] The prosecution must be directed

Delinquent directors and officers.

[1] The Companies Act, 1862, s. 164.

[2] *Ibid.*

[3] *Ibid.* s. 165.

[4] The Companies Act, 1862, s. 166. As to punishment of fraudulent directors see 24 & 25 Vict. c. 96, ss. 81–84.

by the Court,[1] and the application for such direction must be made by petition.[2]

Frauds by directors under that statute are misdemeanors punishable with a maximum penalty of seven years' penal servitude.

[1] The Companies Act, 1862, ss. 167, 168.

[2] Gen. Order, November, 1862, rule 51.

APPENDIX.

FORMS.

FEES.

THE various forms of Memoranda of Association are too long to insert in a work so small as the present. The reader is referred to the Second Schedule of the Act of 1862 for forms of Memoranda of Association, and to Table A. of the Act, and the Second Schedule for forms of Articles of Association.

FORM.

ANNUAL STATEMENT OF MEMBERS AND CAPITAL, TO BE MADE BY A COMPANY HAVING ITS CAPITAL DIVIDED INTO SHARES. REQUIRED BY SEC. 26 OF THE COMPANIES ACT, 1862. *See* p. 36.

FORM E, *as required by the Second Part of the Act.*

SUMMARY of CAPITAL and SHARES of the COMPANY, made up to the day of

Capital £ divided into Shares of £ each.
Number of Shares taken up to the day of
There has been called up on each share £
Total Amount of Calls received, £
Total Amount of Calls unpaid, £

LIST of Persons holding Shares in the Company on the day of and of Persons who have held Shares therein at any time during the Year immediately preceding the said day of , showing their names and Addresses, and an account of the Shares so held.

Folio in Register Ledger containing Particulars.	NAMES, ADDRESSES, AND OCCUPATION.				ACCOUNT OF SHARES.					Remarks.
	Surname.	Christian Name.	Address.	Occupation.	Shares held by existing Members on the day of	Additional Shares held by existing Members during preceding Year.		Shares held by Persons no longer Members.		
						Number.	Date of Transfer.	Number.	Date of Transfer.	

FORM F.

LICENCE TO HOLD LANDS. (*See* p. 25.

THE Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations, hereby license the association, limited, to hold the lands hereunder described [*insert description of lands*]. The conditions of this licence are [*insert conditions, if any*].

FORM D.

FORM OF YEARLY STATEMENT TO BE MADE BY LIMITED BANKING COMPANIES, &c. (*see* p. 26), REFERRED TO IN PART III. OF THE ACT.

* The capital of the company is , divided into shares of each.

The number of shares issued is .

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company :

On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*], £
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

* If the Company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

THE following Acts are repealed by sect. 205 of the Companies Act, 1862, except so much of them as is set forth in the second part of this Schedule :—

THIRD SCHEDULE.

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3, c. 46 (Parliament of Ireland)	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships.
7 & 8 Vict. c. 110 .	An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
7 & 8 Vict. c. 111 .	An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113 .	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict. c. 98 .	An Act for facilitating the winding up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28 .	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75 .	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78 .	An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
11 & 12 Vict. c. 45 .	An Act to amend the Acts for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and winding up of Joint Stock Companies and other Partnerships.
12 & 13 Vict. c. 108 .	An Act to amend the Joint Stock Companies Winding up Act, 1848.
19 & 20 Vict. c. 47 .	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
20 & 21 Vict. c. 14 .	An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict. c. 49 .	An Act to amend the Law relating to Banking Companies.
20 & 21 Vict. c. 78 .	An Act to amend the Act seven and eight Victoria, chapter one hundred and eleven, for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the Joint Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80 .	An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict. c. 60 .	An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91 .	An Act to enable Joint Stock Banking Companies to be formed on the principle of Limited Liability.

SECOND PART.

7 & 8 Vict. c. 113, s. 47.

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers, within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the Session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, Chapter 46, intituled "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the thirty-ninth and fortieth years of the reign of his late Majesty King George the Third, intituled "An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the sum of three millions towards the supply for the service of the year one thousand eight hundred, as relates to the same," provided that such first-mentioned company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

20 & 21 Vict. c. 49, Part of Section XII.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the Session holden in the seventh and eighth years of the reign of her present Majesty, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not exceed-

ng ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this Act have carried on such business.

TABLE B.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT STOCK COMPANIES BY A COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

	£	s.	d.
For registration of a company whose nominal capital does not exceed 2,000*l.*, a fee of	2	0	0
For registration of a company whose nominal capital exceeds 2,000*l.*, the above fee of 2*l.*, with the following additional fees, regulated according to the amount of nominal capital (that is to say) :—			
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 2,000*l.*, up to 5,000*l.*	1	0	0
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 5,000*l.*, up to 100,000*l.*	0	5	0
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 100,000*l.*	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per 1,000*l.*, or part of a 1,000*l.*, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			

	£	s.	d.
For registering any document hereby required or authorized to be registered, other than the Memorandum of Association	0	5	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of	0	5	0

TABLE C.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT STOCK COMPANIES BY A COMPANY NOT HAVING A CAPITAL DIVIDED INTO SHARES.

	£	s.	d.
For registration of a company whose number of members, as stated in the Articles of Association, does not exceed 20	2	0	0
For registration of a company whose number of members, as stated in the Articles of Association, exceeds 20, but does not exceed 100	5	0	0
For registration of a company whose number of members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100			
For registration of a company in which the number of members is stated in the Articles of Association to be unlimited, a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			

	£.	s.	d.
For registering any document hereby required or authorized to be registered, other than the Memorandum of Association	0	5	0
or making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of	0	5	0

GENERAL ORDER, NOVEMBER, 1862.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

	£	s.	d.
For preparing and drawing up every order made at chambers, and attending for same, and at the registrars' office to get same entered	0	13	4
For engrossing every order in addition to the above fee, per folio	0	0	4

For other duties performed, such of the fees on the higher scale authorized by the 2nd Rule of the 38th of the Consolidated General Orders, and the regulations as to solicitors' fees subjoined thereto, as are applicable; except that the special fee allowed on creditors' claims is not to apply.

Where under such regulations a fee of three guineas may be allowed for attending any summons or other appointment at the judge's chambers, the same may be increased to any sum not exceeding five guineas.

The fee of 2*s.* 6*d.* allowed by such regulations for notices and services shall be reduced to 1*s.* 6*d.*, where the service may be effected as provided by the above Rule 63.

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Fees payable in case of the Appeal being heard by the Lord Warden.

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Attendance of the Registrar of the Court below, or his deputy, on the hearing, with or without original records or documents in the custody of the Court below when such attendance shall be required by the Court of Appeal, per diem (besides reasonable travelling and necessary expenses)	2	2	0

(Signed) PORTMAN, Warden of the Stannaries.
EDWARD SMIRKE, Vice-Warden of the Stannaries.

Signed in testimony of consent and approval,

HATHERLEY, C.
W. ERLE.
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Signed in testimony of the sanction of the Lords Commissioners of Her Majesty's Treasury so far as regards the fees imposed,

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Same fees for service and execution as in Equitable Matters.

Note.—This Order will be found in full in the Weekly Notes of 1875, p. 568. For the High Bailiff's Fees in Equitable Matters, see Weekly Notes, 1875, pp. 570, 571.

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